

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

77-2047

B
P/S

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

JOHN H. MONE,

Petitioner-Appellee,

v.

CARL ROBINSON, WARDEN, CONNECTICUT
CORRECTIONAL INSTITUTION AT SOMERS,

Respondent-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

JOINT APPENDIX

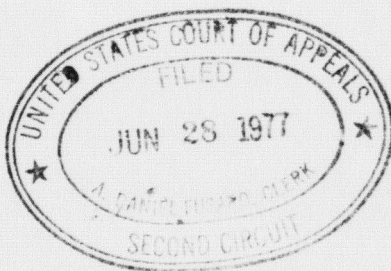
GEORGE D. STOUGHTON
State's Attorney

RICHARD F. BANBURY
Chief Assistant State's Attorney

Attorneys for Respondent-Appellant
95 Washington Street
Hartford, Connecticut 06106

MICHAEL J. DEGREGORIO
27 North Street
Pittsfield, Massachusetts 01201

STEPHEN WIZNER
127 Wall Street
New Haven, Connecticut 06520
Attorneys for Petitioner-Appellee



PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX

	Page
Docket Entries.....	A1
Transcript of June 6, 1973.....	A3
Transcript of June 28, 1973.....	A15
Minutes of Sentencing Hearing, June 28, 1973 State vs. Nanette Mone.....	A24
Excerpts of Transcript of March 13, 1975.....	A30
Stipulation as to Witnesses.....	A56
Exhibit A--Affidavit of Wayne Owen.....	A58
Exhibit B--Report of Wayne Owen.....	A60
Exhibit C--Affidavit of Ann Oberkirch.....	A63
Exhibit D--Report of Dr. Donald R. Grayson.....	A65
Exhibit E--Letter dated January 15, 1976.....	A70
Memorandum of Decision dated April 14, 1973 (State Habeas Corpus Case).....	A71
Memorandum of Decision dated March 26, 1977 (Federal Habeas Corpus Case).....	A74
Judgment of the District Court dated April 9, 1977.....	A90



A 1
DOCKET ENTRIES

DATE	NO.	DESCRIPTION
9-22	1.	Application for writ of Habeas Corpus, filed, with affidavit of John Mone.
"	2	Application to proceed in forma pauperis, "permission granted to proceed in forma pauperis," Blumenfeld, J. m 9-23-75.
"	3	Low Student Intern Appearance Form. (Ann Freda Thomas) approved, Blumenfeld, J. m 9-23.
9-23	4	Summons issued and together with same and copies of writ and attested copies of application to proceed in forma pauperis handed to USM.
10-3	5	Appearance of Stephen Wigner entered for pltf.
10-2	6	Appearance of Richard Banbury entered for the def.
11-11	7	Marshal's returns showing service.
12-1	8	Motion to Dismiss filed by def.
	9	Motion for the Production of State Court Records, filed by Pltf.
12-9	10	Memorandum of Law in Opposition to Respondent's Motion to Dismiss and in support of Petitioner's Application for Writ of Habeas Corpus.
12-23	11.	ORDER, Re: record from Superior Ct (Mtn) Blumenfeld J m 12-9-75. Certified copy of Order handed to Marshal for service on Clerk. Copies mailed to counsel and copy mailed by certified mail to Clerk, Superior Ct. Mtn.
"	12.	Motion to Allow Appearance of Co Counsel filed by Michael DeGregorio. "motion granted" Blumenfeld J. m 12-23-75. Copies mailed.
12-22		Appearance of Michael DeGregorio entered for the Pltf as co-counsel.
1976		HEARING over to 1/12/76
1-9	13.	Memorandum in opposition to respondents motion to dismiss submitted by Co-Counsel for Petitioner.
1-17-75	14	U.S. Marshals return showing service.
1976		
12		HEARING on Def. motion to dismiss. Dec. Res.
1-20	15.	Ruling on Motion to Dismiss, Blumenfeld, J. m 1-20-76, Copies mailed (denied)
1-29	16.	Return of Respondent.
2-10	17	ORDER, Re: (transcript of habeas corpus proceeding in State Court to be sent to Federal Court.) Blumenfeld, J. m 2-10-76. Copies mailed to counsel and by certified mail to Clerk of the Superior Court for Middlesex County in Middletown.
2-27	18	ORDER, TO SHOW CAUSE, Blumenfeld, J. m 2-27-76. (Re: Clerk, Superior Court Mtn.). Two attested copies handed to Marshal for service, and one mailed by certified mail to Clerk. Copies to counsel.
3-11	19	Marshal's return unexecuted per order of the Court no endeavor made. Held per Order, of the Court.
3-18	20	Transcript of State Court Proceeding of March 13, 1975,
3-22		HEARING on OSC why Transcripts of Superior Court proceedings not made available as requested by Judge Blumenfeld, Def. witness sworn and testified.
4-20	21.	Copies of Suit filed in Superior Court Middlesex County (23692).
4/22		Court Reporter's notes of Proceedings held on Jan. 12, 1976, filed in Hfd. (Collard, R.)
4-26		Court Reporter's notes of Proceedings held on March 22, 1976, filed in Hfd. (Collard, R.)
5-7	22	Ruling on Order To Show Cause, Blumenfeld, J. m 5-7-76. Copies to counsel and Mr. Gurnham, and Atty General. (Mr. Gurnham complied and OSC is dismissed)
10-14	23	Memorandum of Law in support of petitioners application for writ of habeas corpus.
12/13	24	HEARING on the merits. Stip. of parties filed and rec'd into evidence. Respondents trial brief filed.. Dec. Res.
12-10	24	Petition for Writ of Habeas Corpus Ad Testificandum (John Mone - 12-13-76).
12-10	25	Writ of Habeas Corpus Ad Testificandum - Blumenfeld, J. m 12-14-76. Copies mailed.

A 2
Docket Entries

CIVIL DOCKET CONTINUATION SHEET		FD-501 (Rev. 1-15-75)
PLAINTIFF	DEFENDANT	DOCKET NO. <u>175-226</u>
NONE	ROBINSON, Carl	PAGE <u>2</u> OF <u> </u> PAGES
DATE	NR.	PROCEEDINGS
2-15 1977 1/17	26	Marshal's return showing service of H.C.A.T. on 12/13/76 Court Reporter's notes of Proceedings held on December 13, 1976, filed in Hartford. (Collard, R.)
3-28	27	MEMORANDUM OF DECISION, Blumenfeld J. m3-28-77 Copies mailed to counsel of record. (writ of h.c. shall issued unless state shall vacate prior sentence and afford him opportunity to plead over within 60 days from judgment)
4-9	(28)	JUDGMENT entered. Markowski, C. m4-11-77. Copies mailed to counsel.
4-19	(29)	Notice of Appeal filed. Copies mailed to counsel. Attested copies of appeal and docket entries mailed to US. Court of Appeals and New Haven. Civil Management Plan and Forms C & D mailed to Attorney Banbury.
4-27	30	Motion for Waiver of Bond for Costs on Appeal filed by def. "Granted" Blumenfeld, J.m 4/28/77, Copies mailed.
4-29	31.	Transcript of Hearing held on 12/13/76. Collard, R.
5-2		Scheduling Order filed.

A True Copy
ATTEST:

WINSTON A. MARKOWSKI
Clerk, U. S. District Court

By:
Deputy Clerk

A 3
TRANSCRIPT OF JUNE 6, 1973

NO. 36246

STATE

SUPERIOR COURT

V.

HARTFORD COUNTY

JOHN H. MONE

JUNE 6, 1973

BEFORE HONORABLE JOSEPH F. DANNEHY, JUDGE

GEORGE D. STOUGHTON, ESQ.
ATTORNEY FOR THE STATE

JAMES N. EGAN, ESQ.
ATTORNEY FOR THE DEFENDANT

MR. STOUGHTON: If the Court please, we understand that there will be a change of plea in the case of State against John Mone, 36246. I understand the change of plea will be to the third count, your Honor.

MR. EGAN: The former plea of not guilty is withdrawn, Mr. Mone?

THE DEFENDANT: Correct.

MR. EGAN: And election for trial by jury is also withdrawn, your Honor.

THE COURT: All right. John H. Mone, the Defendant in case docketed number 36246 will be permitted to withdraw his previous pleas of not guilty and to change his election for trial.

THE CLERK: John H. Mone, on April 24, 1973, you entered a plea of not guilty to an information charging you on three counts with accessory to attempted larceny by extortion, conspiracy to commit larceny by extortion, and conspiracy to commit kidnapping in the second degree. You entered a plea of

not guilty and elected a trial by a jury of twelve. Do you now wish to change your plea and election to the third count?

THE DEFENDANT: Yes, sir.

THE CLERK: John H. Mone, to an information charging you on the third count with conspiracy to commit kidnapping in the second degree in violation of Section 53A-48 and 53A-94 of the General Statutes, what is your plea, guilty or not guilty?

THE DEFENDANT: I want to plead guilty, sir.

THE COURT: Mr. Mone, you have just pleaded guilty to the third count of this information charging you with a conspiracy to commit kidnapping in the second degree. Do you understand that by pleading guilty you have convicted yourself?

THE DEFENDANT: Yes, sir.

THE COURT: Will you speak a little louder, please?

THE DEFENDANT: Yes, sir.

THE COURT: And do you understand that nothing remains for the Court to do now except to find you guilty and then at a later time to decide what your punishment will be?

THE DEFENDANT: Yes, sir, I understand.

THE COURT: Now, I have to be certain that you are pleading guilty voluntarily; that is, of your own free will, with an intelligent understanding of the nature of the offense charged against you, and of the possible consequences of your plea; and further you have pleaded guilty unconditionally. I

am aware that Mr. Egan has made very careful preparations for your arraignment. These preparations involve psychiatric and psychological evaluations and testing. I am satisfied that you are a man of superior intelligence. You comprehend fully the nature of this arraignment, and that you are competent, mentally competent, to proceed. Am I correct in that assessment?

THE DEFENDANT: I believe so, your Honor.

THE COURT: So that there is nothing about your situation at this moment that you do not fully comprehend and clearly understand?

THE DEFENDANT: I believe I do understand, your Honor.

THE COURT: Now, I want to ask you some questions. You listen carefully to each question. If you don't hear me, ask me to repeat the question. If you don't understand the question -- and that is hardly likely, because I also know that you have a superior command of the English language and you are especially gifted in articulating that language -- ask me to say it again in language that you do understand. And if at any time you want to interrupt this questioning to discuss the question or the answer with Mr. Egan, feel free to do so. Is that clear?

THE DEFENDANT: Yes, sir.

THE COURT: Now, have you discussed fully with Mr. Egan the offense of conspiracy to commit kidnapping in the second degree charged against you in this information?

THE DEFENDANT: Yes, I have.

THE COURT: Did you discuss the plea of guilty that you made to the charge?

THE DEFENDANT: Yes, sir.

THE COURT: Are you satisfied with the advice and with the assistance that Mr. Egan has given you?

THE DEFENDANT: Yes, sir, I am satisfied with his advice.

THE COURT: Was there anything that you asked Mr. Egan to do for you that he didn't do?

THE DEFENDANT: No, sir.

THE COURT: Can you think of anything that he should have done for you that he didn't do?

THE DEFENDANT: No, sir.

THE COURT: You were originally charged in the information filed against you by the State's Attorney with two other offenses. Apparently, the State will not proceed against you on those first two counts. Is the fact that Mr. Egan was able to gain these concessions for you part of the reason for your satisfaction?

(The Defendant conferred with Mr. Egan.)

THE DEFENDANT: Yes, sir.

THE COURT: Was Mr. Egan's concern that you would fully understand the nature of this proceeding a concern that manifested itself in his arranging for the various tests which you undertook before this plea? Is that part of the reason

for your satisfaction?

(The Defendant conferred with Mr. Egan.)

THE DEFENDANT: Yes, sir.

THE COURT: Is that so?

THE DEFENDANT: Yes, sir.

THE COURT: So that in every way Mr. Egan represented you competently and adequately?

THE DEFENDANT: Yes, sir.

THE COURT: He did everything that you wanted him to do? You can think of nothing else that he should have done?

(The Defendant conferred with Mr. Egan.)

THE DEFENDANT: No, sir.

THE COURT: Do you understand that you are pleading guilty to a charge of conspiracy to commit kidnapping in the second degree?

THE DEFENDANT: Yes, sir, I understand.

THE COURT: Does the State's Attorney have a version of this offense?

MR. STOUGHTON: Yes, your Honor.

THE COURT: Will you recount it, please.

MR. STOUGHTON: Yes. In March, if the Court please, the police received information from a man in Waterbury who was a member of a motorcycle club. He had been contacted by a woman who said that her boss had a job for them if they were interested in making \$25,000, and instructing him to go to

a particular phone booth where he would receive some additional information and instructions. So he did go to the phone booth, and he received a call from a man who said that he wanted the members of the motorcycle club to hold a certain family hostage, and that they could make some money by doing so, and he was informed that he would receive additional instructions in written form if he were to go at a particular time to a certain restaurant where they would be taped inside a restroom, and eventually he did get the instructions, and the motorcycle club was to hold the family of a wealthy man in Bloomfield hostage, and the husband and father was to be allowed to leave and he would be instructed to get some money and place it somewhere it could be picked up. All these instructions were turned over to the police and they thereafter did a magnificent job, we think, in investigating this case, and they took the place of the motorcycle club members. The instructions included a map, hand-drawn map and detailed instructions as to how to get to the place of the victim who was named. The police contacted the victim and told him what the plan was, and he also cooperated with the police. Thereafter, the police, taking the part of the motorcycle club members, did move into this man's house. He was allowed to leave. He received instructions by phone to go to a motel in East Hartford where he received further instructions telling him to get some money, \$100,000, from a bank. Later he was told to take \$50,000, to put it in a paper bag, and to take it to Woodstock, Connecticut, and hide it under, I think, a

culvert down an embankment. The police were in the vicinity when he did that with the paper bag full of something, not the money, and the Defendant arrived to pick up the bag which he thought contained the money, and he was arrested. Some of these phone calls were taped, and voice print identifications were made showing that the man who made the calls was this Defendant.

THE COURT: Did you hear what Mr. Stoughton said?

THE DEFENDANT: Yes, your Honor, I did.

THE COURT: Was that the plan that you conceived?

(The Defendant conferred with Mr. Egan.)

THE DEFENDANT: Your Honor, I conceived the plan, but I would like to say something.

THE COURT: Excuse me, I didn't hear what you said.

THE DEFENDANT: I conceived the plan, but I would like to say something further on. Your Honor, this plan was not conceived to take money from anyone or to hurt anyone. I was concerned from some time ago with a situation with corruption in Waterbury. I started out by trying to put together facts to write a book, and that was the reason for the code name.

THE COURT: You can do much better than that, I know you can. You will have to speak louder.

THE DEFENDANT: Shall I repeat?

THE COURT: Yes.

THE DEFENDANT: I started out, I had understood that there was a great amount of corruption in the Town of Waterbury. I wanted to write a book exposing this corruption. I adopted the name ARGUS, which means Author's Research on Gangs United Society. I did not start this with an evil intent. My only intention was to do the people of the State some good. Along the line this was changed, and unfortunately no one would believe it, and it became something that was not intended to be in the first place, your Honor. I am not a criminal. I don't have a criminal mind. And as far as my wife is concerned she never thought there was anything but a book that I was writing at any time. She had no knowledge of what eventually went on later. As to what actually did happen, I don't know whether or not I am supposed to say that in this court or not, but it probably will not be believed. So I stand here today, your Honor, and I plead to the conspiracy to kidnap charge, but in my mind, your Honor, I am innocent.

THE COURT: So in effect what you have told me is that in the beginning you were alarmed by the corruption that you thought pervaded the town of Waterbury?

THE DEFENDANT: That is correct, your Honor.

THE COURT: And you adopted the code name ARGUS?

THE DEFENDANT: Correct.

THE COURT: And under that code name you intended to go into the City of Waterbury and expose it?

THE DEFENDANT: Correct, your Honor.

THE COURT: As a corrupt place. But along the way the plan changed?

THE DEFENDANT: Correct, sir.

THE COURT: And it became this conspiracy to kidnap?

THE DEFENDANT: That is correct, sir.

THE COURT: So that you are guilty of the offense charged?

THE DEFENDANT: Yes, sir.

THE COURT: Have you been advised by Mr. Egan of the maximum penalty provided by law for this offense?

MR. EGAN: I believe it's twenty years, your Honor.

THE COURT: Yes. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Do you know whether or not Mr. Egan has discussed this case with Mr. Stoughton, the State's Attorney?

THE DEFENDANT: Yes, sir, he has.

THE COURT: Do you know whether or not the State's Attorney intends to make a recommendation as to sentence?

THE DEFENDANT: I believe he does, sir.

THE COURT: Do you know that the Court does not have to accept the recommendation of the State's Attorney as to the sentence to be imposed?

THE DEFENDANT: Yes, sir.

THE COURT: So you are aware that even if a recommendation as to sentence is made, the Court may reject it and sentence you within the limitations provided by the statute, twenty years?

THE DEFENDANT: Yes, sir, I understand.

THE COURT: Your plea, then, is made without any conditions?

THE DEFENDANT: Yes, sir.

THE COURT: You have pleaded guilty voluntarily of your own free will and because you are guilty and for no other reason?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand now that there will not be a trial by jury?

THE DEFENDANT: Yes, sir.

THE COURT: Do you want to give up your right to trial by jury?

THE DEFENDANT: I feel I have no choice, your Honor.

THE COURT: Do you understand now that you will not confront the witnesses against you, you will not see those witnesses, you will not hear those witnesses?

THE DEFENDANT: Yes, sir.

THE COURT: Do you want to give up that right?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that by pleading guilty, you have convicted yourself, you have given up your right to remain silent?

(The Defendant conferred with Mr. Egan.)

THE DEFENDANT: Yes, sir.

THE COURT: Do you want to give up your right to remain silent?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions of the Court?

(The Defendant conferred with Mr. Egan.)

THE DEFENDANT: Your Honor, I again would like to emphasize my wife had absolutely no knowledge of what did take place, and I at this time would very much like to ask the Court if the Court might have mercy to release my wife, to release her clear, because she had nothing whatsoever to do with this. She did only what I asked her to do, and she just thought that I was writing a book. My family thought I was writing a book. The way this thing turned out there was no knowledge at all. I do not want to see her with a criminal record because there was no conspiracy ever.

THE COURT: You plead mercy for your wife, but I think that it may fairly be implied from the plea that you understand your own predicament, and you have no questions of the Court concerning this arraignment, is that a correct understanding?

THE DEFENDANT: My major concern, sir, is for my family.

THE COURT: All right. Do you have any questions of Mr. Egan?

THE DEFENDANT: No, sir.

THE COURT: The plea of guilty is accepted. The Court finds that the plea entered voluntarily with full understanding of the offense charged and after adequate and effective assistance of counsel. A judgment of guilty may enter with respect to the third count of the information to which the plea of guilty was made.

MR. STOUGHTON: Your Honor, the probation department has requested that cases be continued until July 6th, at which time Mr. Egan will be away. If the Court will order a presentence report and continue the case until June 29th, perhaps they can have it ready by that time.

THE COURT: The matter is referred to the Department of Adult Probation for presentence investigation and report. The report will be rendered before June 29, 1973 on which date sentencing will occur.

MR. STOUGHTON: Thank you, your Honor.

TRANSCRIPT OF JUNE 28, 1973

NO. 36246

STATE

SUPERIOR COURT

V.

HARTFORD COUNTY

JOHN H. MONE

JUNE 28, 1973

BEFORE HONORABLE JOSEPH F. DANNEHY, JUDGE

GEORGE STOUGHTON, ESQ.
ATTORNEY FOR THE STATE

JAMES N. EGAN, ESQ.
ATTORNEY FOR THE DEFENDANT

MR. STOUGHTON: Your Honor, may we call the case of State v. John Mone, No. 14 on the list, 36246.

MR. EGAN: In connection with this matter, your Honor, it is my understanding that Mr. Mone had some kind of a spell at the Seyms Street Jail during the past week. I subpoenaed a gentleman from the jail who has the record of this most recent incident with him. I have not seen it. He has it with him now. I would like to have him give it to your Honor and have you look at it because I believe it's not included in the pre-sentence report. I don't know what's in it myself.

THE COURT: Do you want the opportunity to read it?

MR. EGAN: It's a matter of record, your Honor. I think I have a general idea of what it is by the

accused's parents report.

(Document handed to the court.)

THE COURT: Is Mr. Mone here? Is this the notation to which you have referred my attention? "Mr. Mone was seen here," that is at the clinic, "on June 23rd after having an episode of a catatonic nature. He appears to be under some stress," and parenthetically I might note we can all understand that, "and is rather upset about the course of the events in his life. These attacks seem to occur when Mr. Mone is unoccupied. There is probably little that can be done to stop it. However, the requeryency may be diminished by providing activity. This problem seems to be of a type similar to a Ganser syndrome."

MR. EGAN: That is, as I understand.

THE COURT: How do you feel this morning, Mr. Mone?

THE DEFENDANT: Very nervous, your Honor.

THE COURT: All right.

MR. STOUGHTON: If the court please, the defendant is thirty-four and he is the architect of this very bizarre scheme which the court knows of, having to do with the kidnap attempt starting on March 3rd with a telephone call in Waterbury proceeding through a series of phone calls to a group of people who contacted the police and brought them into the plan. It culminated when the police, taking the place of the

persons who contact had been made with, went into the house of a wealthy family in Bloomfield pretending to hold them as hostage while the husband and father went out to get some -- supposedly to get some money and to deposit it in a place where the defendant Mr. Mone tried to pick it up. At that time he was apprehended by the police.

The defendant's background appears at some length in the pre-sentence report. Defendant's counsel arranged for an examination so that he was able to be convinced that the defendant was able to stand trial.

We discussed this case, Mr. LaBelle and defense counsel and I, on a number of occasions, and finally agreed that we could suggest this kind of a sentence to the court, that there be a sentence to the Connecticut Correctional Institution at Somers for a period of not less than four nor more than fifteen years. Now, we thought that we could make that suggestion to the court because it includes a long maximum term which gives the authorities at Somers discretion as to how long they ought to hold him. We felt there ought to be a minimum at least of that which we have suggested, but that is not something agreed to by defense counsel.

MR. EGAN: Well, again, your Honor, as I say, the first fact that cannot be evaded is that this man set into motion a chain of circumstances that could have culminated in total disaster for a number of people, and actually did cause,

as the pre-sentence investigation states justifiably, a tremendous amount of mental anguish and concern for the family involved.

Now, in my own experience, your Honor, I think I have never encountered a case as bizarre as this. I have talked to Mr. Mone at Seyms Street and I felt that it was absolutely incumbent upon me to have a proper examination of him psychiatrically both because the story that he was telling me was so bizarre and because I myself was not completely convinced by the circumstances as he had explained them to me.

I did talk to his mother. She impresses me as a totally honest woman. She did tell me that starting in June of '72 he began talking to his cats extensively, and that in September of '72 she became extremely concerned because the cats started replying to him. Apparently he has -- and I had his express permission, your Honor, because of the psychiatric -- psychiatrist-patient privilege -- I asked Mr. Mone expressly if I could make the psychiatric evaluation and report available to the court, and he expressly told me that I could, isn't that correct, Mr. Mone?

THE DEFENDANT: That's correct.

MR. EGAN: Louder, please.

THE DEFENDANT: Yes, that's correct.

MR. EGAN: Right. And, as I say, what happened in the case, the psychiatrist who is very familiar to me,

went to the jail and examined him, and he found the story so bizarre about the cat named Kong, who sometimes uses the name Amaska, telling him to clean up the evil in Waterbury in effect, and that upon the advice of this cat he undertook to do that, and this was a collateral offshoot of the cat's advice.

Now, when the psychiatrist examined him he thought the story was exceedingly bizarre, so he hired -- I engaged at Mr. Mone's parents' expense, actually, a psychologist from the Institute of Living to give him a psychological examination.

THE COURT: That was Dr. Grayson?

MR. EGAN: Dr. Grayson was the psychiatrist.

The other gentleman who was giving the tests was never told by Dr. Grayson anything about the bizarre nature of Dr. Grayson's conversation because Dr. Grayson wanted a totally fresh impression of the man, and the other man went up and heard about the cats, and at first he thought that this was a put-on, some kind of an act, but at times the man seems completely convinced that the cats do advise me, and I guess the advice that they gave him was very poor in this case certainly. He says he hasn't heard from the cats since he's been in jail because apparently they have been disappointed in him.

Now, one of the things that is apparent, he actually does own thirty cats, and he has names for all of them. He owns four raccoons and a skunk, and his parents told me also that he was writing some kind of a book, as he has

indicated to the psychiatrist and which he has used a part of his explanation of the weird chain of events that occurred.

Now, the final thing I would like to say is that it came to my attention this week that he had had this seizure, and I talked to Dr. Grayson about it, and I told him that I had heard that he had some kind of a catatonic seizure, and he said that he was not unfamiliar with the possibility of such a seizure actually being possible in a case of this nature. He had a psychological or psychiatric term for it. But he said that there could be in a case where a man is as confused as Mr. Mone such a seizure under these circumstances. He didn't say that there was. He didn't know of that report, but he said it was not an impossibility.

Now, that's about all I can say. As usual, the victim's parents are suffering far more than he is, really. They are barely able to stand the financial expense that this has cost them, the nervous tension, the whole thing. It's a pitiful thing. His mother is one of the finest women and his father is a very fine gentleman. They have been through absolute hell during this entire period, and yet they are completely innocent, knew nothing about it. The most unfortunate thing is something wasn't done about Mr. Mone when he started carrying on these conversations with the cats, and certainly when he started thinking the cats were talking back to him. His parents tell me if a spider crawls across the floor he'll pick it up in a piece of tissue and carry it out and let it go out-

side the house; or if any kind of a bug is in the house he will never kill it. He'll pick it up on a piece of tissue and carry it away and let it go. There are some very strange things that in a way would seem to me to confirm some of what he says, but the situation is one that is so bizarre I can't fathom it.

He has been cooperative with me from the very beginning. There's never been any question about him wanting to go to trial or wasting the court's time and money. I think he's been fair insofar as he can.

"I think the recommendation of Mr. Stoughton is not unfair. I have to say that in view of what could have happened in this case. This was a powder keg that he was fooling with. But I would like a little bit less time. I'd suggest three as a minimum, if possible. But I really -- I'll leave that up to the court."

THE COURT: Mr. Mone, do you understand that you have the right to an appeal from the sentence of the court?

THE DEFENDANT: Yes, sir, I do.

THE COURT: And do you understand that if you are unable to pay the costs of an appeal you may apply to any judge of this court for appointment of counsel to represent you?

THE DEFENDANT: Yes, sir. I would like to say something, your Honor.

THE COURT: You may.

THE DEFENDANT: I would like to say that I am

deeply sorry about the way this episode did turn out, but I would also like to say that there was absolutely no evil, sir, in my mind when I started this thing. I intended only good. And I wish that there was some way I could convince the court of this. Certain things did happen once I started this, and now, of course, it comes to me that I was wrong to start it, but at the time I thought that I could put an end to the corruption in Waterbury because it had been bothering me for a long time. And the methods that I used evidently were very wrong. But the explanation that I gave to Mrs. Phelon in the pre-sentence report was the truth. It did actually happen that way. And as far as the charge against me is concerned, I certainly cannot deny it, but I do deny I started or ever had any evil intentions or any desire to harm the Lipmans or collect the money, or anything like that, in my mind. It was never there, sir. And I do not feel myself that time in prison will help me. If I am as confused as people say that I am, I would rather go to an asylum for the time being where they could help me, and I feel that perhaps this would help. I've been told that I'm bright and I've been told that I do have a contribution to make to society, and I would very much like to do it. And if there is confusion in my mind, sir, I want to get rid of it.

THE COURT: The story that you told and repeated to many people was said by Dr. Grayson to sound definitively psychotic; but Dr. Grayson did not believe your

story. // You see, again you say now that you are told you are bright. You know that you are bright. You have a familiarity with psychiatric terminology. You have a fluent goal-directed speech as you exhibited here this morning. You have in fact a great insight into yourself, a deep understanding of the psychological needs of your family; but within you there was anger and frustration because of some of your recent business failures, and this anger was directed at a certain class of people. //

There are those who persist in saying your plan was bizarre. I say your plan was evil from the beginning.

// It is the sentence of the court that you be committed to the Connecticut Correctional Institution at Somers for a term of not less than nine nor more than twenty years.

THE CLERK: John Mone is being advised of his rights.

* * * * *

MINUTES OF SENTENCING HEARING, JUNE 28, 1973
STATE VS. NANETTE MONE

36265

STATE

SUPERIOR COURT

V.

HARTFORD COUNTY

NANETTE MONE

JUNE 28, 1973

BEFORE HONORABLE JOSEPH F. DANNEHY, JUDGE

GEORGE D. STOUGHTON, ESQ.
ATTORNEY FOR THE STATE

JAMES N. EGAN, ESQ.
ATTORNEY FOR THE DEFENDANT

MR. STOUGHTON: May we call docket 36265, State against Nanette Mone. It's number fifteen on the list, your Honor.

If the Court please, the defendant is thirty, and she has pleaded guilty to a charge of being an accessory to attempted larceny by extortion. The offense began on March 3rd. It's a very unusual case. I know the Court is familiar with it, but briefly on that date a woman called a member of a motorcycle club in Waterbury by telephone asking if the club would do a particular job without describing it for twenty-five thousand dollars, and told them that if he was interested he should go to a telephone booth described and wait for a phone call that evening at a certain time. So he did that, and he got a call at this time from a male voice, and he was told briefly that he was to hold certain people hostage for a day or two. The people were not at that time identified. A few days later the man received a telephone call from the same woman saying there was a letter taped to

a toilet tank cover in McDonald's Restaurant in Waterbury with instructions. So the man went there and he found the letter, and this gave a general description of what was to happen. Several days later the man called the motorcycle club member again and described the family as being a very wealthy one. There were several more telephone calls and other instructions given which developed that the family to which this should be done to obtain money from them was a wealthy Bloomfield family. The motorcycle club members in the meantime went to the police. The police inserted themselves into the scheme by taking the place of the motorcycle club members, and thereafter in an attempt to consummate the scheme the defendants were apprehended. Telephone calls were taped, and voice analysis showed that the defendant in this case had made some of these phone calls.

Now, in the pre-sentence report it gives the Court a great deal of information about her background and also her participation, which seems to me is rather minor. She was doing something she thought for her husband who is the other person charged in this offense. At least it was our feeling he is much the more culpable of the two. We agreed to suggest to the Court that in this case, that is to say, Mrs. Mone's case, there be a sentence to the Connecticut Correctional Institution at Niantic, formerly known as the State Farm for Women, for a period not to exceed five years, but that execution of that sentence be suspended and she be

placed on probation.

THE COURT: Is that an indefinite term?

MR. STOUGHTON: Indefinite not to exceed five years, we thought.

THE COURT: An indefinite term not to exceed five years?

MR. STOUGHTON: Yes.

THE COURT: Maximum Security Division?

MR. STOUGHTON: We thought the Minimum Security Division.

THE COURT: All right.

MR. EGAN: I think the recommendation of the State's Attorney's Office in this matter is extremely fair, your Honor. I do believe that the young lady is the victim of circumstances to a certain degree. I believe that she was misled grievously by her husband in this case, and she has, of course, been in jail since the time of the arrest. I realize that this is an extremely distressful situation to the parties who were threatened in connection with the case, and I don't want to in any way mitigate that fact and don't profess that there is any mitigation of the circumstances, the mental stress, the anguish, and so on, that they must have overgone.

THE COURT: I think we would both agree, if you will pardon the interruption, that that is a circumstance that cannot be mitigated.

MR. EGAN: And, as I say, this girl is a

first offender. I have seen her on three or four occasions. She is extremely distressed about her husband. They are in very poor financial circumstances. I believe she has a job immediately available to her if she is given a suspended sentence. She is still deeply devoted to her husband, and I think that she is starting to realize some of the problems that may exist in his case, which, unfortunately, were not realized before. But I think that the time that she has done at the Farm has had a very curing effect on her, and all I can say, your Honor, is I have the deepest sympathy for her finding herself in the circumstances in which she does. I do believe she will make a sincere effort to earn the respect of the Court if she is allowed her freedom. She is going back to work. The only thing they have is a mobile home which is heavily mortgaged. Her father-in-law is a very ill man. He is on total disability social security, I believe. He just barely can get around. They live right next to their father-in-law and mother-in-law. It is a very sad case as far as the innocent people in the case are concerned.

THE COURT: Mrs. Mone, do you understand that you have the right to appeal from the sentence of the Court?

THE DEFENDANT: Yes.

THE COURT: Do you have any difficulty understanding what I say to you?

THE DEFENDANT: No. I didn't quite hear

what you said.

THE COURT: All right. Do you understand if you are unable to pay the costs of an appeal you may apply to any judge of this Court for appointment of counsel to represent you?

THE DEFENDANT: Yes, sir.

THE COURT: There are aspects of this case, which disturb me. You appear each time as a pathetic, very confused person. You are not a confused person. This report has made it very obvious that you are a person of some intelligence.

THE DEFENDANT: I am confused by what has happened to me.

THE COURT: All right. Speak up in a firm voice.

THE DEFENDANT: I am confused by what has happened to my husband.

THE COURT: I think that everybody has apparently come to agree that your husband deceived you, and that you thought that he was engaged in writing a book, and that you were not aware of what he really planned and schemed to do. After considerable thought I believe that to be so. So I will accept the recommendation made in your case, and it is the sentence of the Court that you be committed to the Connecticut Correctional Institution at Miantic in the Minimum Security Division, formerly the Connecticut State Farm for

Women, for an indeterminate term not to exceed five years.
Execution of that sentence may be suspended, and you are
ordered placed on probation for a period of two years.

THE CLERK: Nanette Mone is being advised
of her rights.

No. 23692

JOHN H. MONE

-vs-

ABRAHAM ZEICHNER

SUPERIOR COURT

MIDDLESEX COUNTY

MARCH 13, 1975

B E F O R E :

HON. HENRY J. NARUK, JUDGE.

Appearances:

MICHAEL CHURGIN, ESQ., and
ANN FRED A THOMAS, Third Year Law Student,
Attorneys for the Plaintiff.

RICHARD BANBURY, ESQ., Assistant State's
Attorney for Hartford County,
Attorney for the Defendant.

Howard I. Gustafson,
Official Reporter

BY MISS THOMAS:

Q Can you tell the Court whether or not Mr. Egan said anything to you about the role of the Judge in this case, at that time?

A Yes. Mr. Egan assured me again -- I had asked him. I said, "The one to three is thrown out. How can I possibly be sure of the four to fifteen, that this is what I'm going to get?" He again said he was friends with the judge, that this was an unfortunate happening. That there was too much political pressure involving it. They had to go along with it. But not to worry about it. That I would not do that amount of time, that I would do the amount of time in the hospital, and he mentioned the figure of something like two years.

Q When you went with him, went to the courtroom on that day, did you have a belief as to what was going to happen?

A Yes. I thought I would be sentenced to four to fifteen years.

Q How did you acquire that belief?

A Directly from Mr. Egan and the State's Attorney, in making his presentation at that time, said that he recommended four to fifteen years.

Q Mr. Mone, who was the judge in your sentencing proceedings?

A Judge Danahey.

A Yes.

Q And who was that?

A Initially? It was Mr. Giddon, the Public Defender.

Q Was he your lawyer throughout the case?

A He was not.

Q Did you have a lawyer after Mr. Giddon?

A Yes.

Q Who was that?

A That was Mr. James N. Egan of Hartford.

Q Did you retain him as your attorney?

A No, I did not. He was retained for me.

Q And who was he retained for you by?

A My in-laws.

Q Did you ever see or speak to Mr. Egan?

A The first time that I saw him was on June 6th.

Q And when -- what was the occasion for seeing him?

A The occasion was the day we were to change our plea.

Q Were you in communication with him between the time he was retained as your counsel and the time you saw him for your guilty plea?

A He sent me two letters. This one was dated in April, and one I believe was dated the first part of May. He said he has been retained by my in-laws. He said he was to see me, one letter said that very weak. The next letter said, "In the

A You're welcome.

Q Did that Retainer include Nanette Mone?

A Yes, it did. Yes. When I spoke to Mr. Egan the following day, the first thing that -- when I got here the next day, I mentioned, "That would be a Thousand Dollars, Mr. Egan, including my daughter-in-law." So he said, "Make it Five Hundred Dollars," and I mentioned it that before he had said a Thousand Dollars. And he said, "Well, that will be it, then. A Thousand Dollars."

Q Did there come a time when you went to visit your son at the Seyms Street Jail?

A Yes, there was.

Q And when was that?

A Whenever I was permitted.

Q Did you visit him during regular visits?

A There was one time I received a phone call from my son. He made a special phone call telling me that he was under great pressure. That he was being blackmailed, and his wife was being held as a -- they were holding his wife as a gun to him. That he would take the guilty plea, which he didn't want to take. And that is the God's honest truth.

Q What happened after that -- if anything?

A The appointment was made for my husband and I to go down and see Jack.

Q What, if anything, did he say to you at that time?

A That the only way for my son to go would be to plead guilty and that he would -- don't worry about them -- that he would get a one to three sentence, and of that time, he wouldn't spend any time in prison. That he would be in a hospital.

Q Can you tell the Court whether or not Mr. Egan discussed with you Nanette Mone's case at that time?

A Yes. He said my daughter-in-law would be off in two weeks time, and I called her boss and told him that in two weeks that she would be back to work. But of course, she wasn't until June 28th.

Q Can you tell the Court whether or not, at that time, Mr. Egan told you anything about the State's Attorney's opinion regarding your son's case?

A Yes. He said that it was all settled. That there was nothing for me to worry about. That he kept referring to my son as my boy. He said, "Your boy will be fine. Leave it to me. I have everything set up. I have everything arranged. There will be a one to three."

Q Can you tell the Court whether or not, at that time, Mr. Egan told you anything about the role of the judge in your son's case?

A Yes. He said the judge was his friend.

Q Thank you. Did you ever see or speak to Mr. Egan again

disability.

Q And what, exactly, did Mr. Egan say with reference to the one to three aspect of the conversation? As far as you can remember?

A He said it would be best -- this was the only way my son would be out soon. That he just kept insisting that no one would believe the fantastic -- he called my son crazy. He said anybody that goes and gets involved in that -- and I kept asking him to please go and investigate and please go and see my son, because my son wanted him to investigate the case.

Q Mrs. Mone, you may have forgotten my question. What were his exact words as far as the one to three, or as best as you can remember the words he used, as far as one to three?

A If you took a plea bargain, that you got off much -- it would be much easier. The taking a chance and going to court, that it would be very -- it would be very -- he just told us it would be very bad for my son. That it was a fantastic thing and nobody would ever believe it. And he made it very, very clear, and I mean all we can do is believe that a lawyer is going to do his best for his client.

Q He told you your son would do better by pleading guilty than by going through a trial because he would probably be convicted?

A Yes.

Q Nobody would believe the story he was going to tell?

A Yes.

Q Did he say anything about a one to three?

A Yes, he did. He said he would get a one to three.

Q He said he could get or he would get?

A He would get a one to three. That is what my husband and I both, all this time, believed that my son would get a one to three, and Mr. Egan, after insisting that at that time my son wouldn't be in a prison. That he would be in a hospital. I don't know how -- why Mr. Egan -- how he was so sure of this, but I just am honestly telling you what he told us. Because, you know, no mother and father want to have their son plead guilty unless they have really been convinced that it's best for him, because I love my son and I only wanted what was best for him.

Q What I am trying to focus on with you, Mrs. Mone, is not the broad picture, but this conversation about a one to three. Was there anything further that Mr. Egan said about where those figures came from -- the one and the three? Or what that was all about?

A No. Just one to three -- I don't know anything about plea bargaining or anything about the court system. That is what the lawyer is for.

Q Did he say on what charge he would be sentenced to one

"There is no other way to go." He said, "This way he will go -- he will go -- he will do one to three, and he will spend most of that time in a hospital," because he used terms like crazy, dizzy, totally off his rocker, and terms of that nature.

Q Thank you, Mr. Mone. And were you speaking to Mr. Egan on the phone at that time?

A I was speaking to Mr. Egan on the telephone. Yes.

Q Did you, in fact, go to Hartford to visit your son?

A Yes.

Q After you spoke on the phone?

A I went, as arranged, to the -- the visit was arranged by Mr. Lapotowsky, his counsellor, and we talked for some possibly twenty minutes.

Q Do you recall the substance of your conversation with your son at that time?

A Yes, I did. I heard my son -- he described to me what the situation was, and I told -- I thought -- I had thought it over quite carefully, and I thought that, being aware of the facts of my son's capacity, I said, "My best advice to you is to follow your attorney's advice." He said -- I said, "Mr. Egan has told me you can get -- he has made arrangements for one to three, and most of that will be in a hospital," and I convinced him, over his objections, and -- but I remained firm, and I said, "Well" -- I closed the conversation with the remark

at his home on May 15th, and I saw Mr. Egan -- well, it was May 15th.

Q All right. And to the best of your recollection, what were Mr. Egan's words -- exact words with respect to the length of the sentence that your son would get if he pled guilty?

A One to three years. Most of which would be spent in a mental institution, because -- he is, "Dizzy, totally crackers", and words to that effect.

Q Did he say, "The Judge will do this -- the Prosecutor will recommend this?"

A No. He said he had arrangements made.

Q Had arrangements made?

A He did not say anybody would do anything. He said he had arrangements made.

Q Did he say anything as to with whom he had made the arrangements?

A He didn't say with whom, but I assume with the State.

Q Did you ask him how he could be sure that that would be the sentence?

A No. It is not in my province to question a professional man. It is -- I didn't feel that it was my -- I just trusted him and had faith in him, that I understood he was a man of quite some renown. I had seen him on TV. I had known

A It could have been May -- maybe 16th or 17th.

Q Okay.

A That was when I saw my son. Then the Saturday following that would have been two days later.

Q All right. Approximately --

A Within the same week. It was within the same week.

Q Within a week after May 15th, there was a conversation in Mr. Egan's office?

A Yes.

Q And this concept of a one to three sentence was discussed again?

A Yes.

Q Do you recall any specific words that Mr. Egan used in connection with presenting to you this notion of one to three at that time?

A He said that no jury would believe him. That the -- the story was cockomania -- absurd -- and that nobody would believe anything he said. He said, "He is nuts." He said, "In fact, he had no damn business going up there," and at that time he said, "I wouldn't even go up there." And at that time he said, "I have two daughters." And he said, "I wouldn't fool around with anything like that." And he said -- at that time he pulled his right hand desk drawer and showed me two weapons, and he said, "I protect my family because I won't go

"up there."

Q Mr. Mone, what did he say exactly, if you can remember, or as close as you can, about the length of sentence of one to three years, during your conversation in his office?

A As closely as I can remember, one to three years, with approximately eighteen months in the hospital -- in a hospital.

Q Was he talking in terms, again, of arrangements --

A Yes.

Q Do you remember what his sentences were?

A That sentence had been met.

Q Was "arrangements" the word he was using, about these two conversations?

A That's correct. I would like to point out one thing, although it is not a question. I am not familiar with plea bargaining. My only concept of the law is under the code of military justice, under which there is no plea bargaining. But I understood -- I was given to understand that Connecticut was a plea bargaining state, and that terms of this sort could be arranged.

Q My question was whether he used the word "arrangements".

A Yes.

Q Did he say anything in greater detail during this meeting in his office on Saturday, about with whom those

J A M E S N . E G A N , called as a
witness on behalf of the Defendant, having been first
duly sworn by the Clerk, testified as follows:

BY THE CLERK:

Q Would you please state your full name and address?

A James N. Egan, 60 Washington Street, Hartford,
Connecticut.

THE CLERK: You may be seated.

DIRECT EXAMINATION BY MR. DANBURY:

Q Mr. Egan, you practice law in Hartford, Connecticut?

A Yes, sir. I do.

Q How long have you been practicing law in Connecticut?

A Twenty-nine years, sir.

Q And for the record, would you just tell us what your
academic degrees are and where you received them?

A I went to Trinity College in Hartford. Got my B.A.
there. I attended Oxford University for several years. I got
a Harvard law degree in 1942.

Q And does your practice include trial work?

A Yes, it does, sir.

Q And does it include the trial of criminal cases?

A Very substantially.

Q And --

A I handled five criminal cases this Monday. Three in

Hartford and two in Winsted.

Q Does your experience include the actual trial of cases to a jury and to a verdict?

A Certainly does. In fact, I think -- I have three straight wins against the State's Attorney's Office in the last three jury cases I tried in the past two months.

Q I was hoping you wouldn't say that.

A I beg your pardon.

THE COURT: I don't think any of the advertising is permitted.

BY MR. BANBURY:

Q Perhaps you could give us a rough idea as to how many criminal cases in the Superior Court in this state you have tried to verdict.

A I don't know. I would say that I have handled, conservatively, three or four thousand criminal cases in the past twenty-nine years. I have tried, I would think, three or four hundred. I have tried and had not guilties on first degree murder cases in Hartford County. The Mathiau Reed (?) case. That was about 1961 or two. And many other cases. I've also lost a good many cases in the Superior Court.

Q Did there come a time, Mr. Egan, when you were retained to represent John Mone and Nanette Mone in criminal matters?

A Yes, at the --

found them to exist. And also, of course, I talked to Mr. Mone at the Correctional Institution on Seyms Street, and my recollection is, and it may be wrong, that I went to Niantic, to the Correctional Institution there once and talked to Mrs. Mone, but that may be wrong. I think this I did.

Q All right.

A At his request -- Mr. Mone's request.

Q And in discussing the merits of the case with members of the State's Attorney's Office, were the facts discussed and evaluated?

A Yes, sir.

Q Now, having become acquainted with the facts of the case, did you enter into discussions with members of the State's Attorney's Office as to what possible recommendations might be made if the Defendant -- if the two Defendants entered guilty pleas?

A Yes, sir. I did.

Q And was the recommendation in consideration of a guilty plea with respect to both Defendants communicated to you by somebody in the State's Attorney's Office?

A It is my recollection that there was, sir.

Q And did you, in turn, communicate to Mr. Mone what recommendation the State's Attorney's Office would be willing to make on a guilty plea?

A Yes, sir.

Q Did you communicate to Mr. Mone the same recommendation that had been recommended to you by the State's Attorney's Office?

A Yes, sir. I did.

Q Do you recall what that recommendation was?

A I do, but by way of a preliminary statement, if I could be indulged to that extent, Mr. Mone had professed to me a great deal --

MR. CHURGIN: Your Honor, I would have to object, if it is going to be questions and answers.

THE COURT: Sustained. I think the question was limited as to whether or not, as I recall it, what the recommendation was.

THE WITNESS: Yes, Your Honor.

THE COURT: And the answer was what?

THE WITNESS: Yes.

THE COURT: So we had better have another question.

BY MR. BANBURY:

Q What was the recommendation that the State's Attorney's Office indicated it would make in Mr. Mone's case?

A When the actual matter was to be charged, it was four to nine. That is when the actual sentencing was to take place. There was the recommendation of four to nine years in Somers.

And a suspended sentence for Mrs. Mone.

Q Do you recall communicating what the recommendation would be to Mr. Mone?

A Yes, sir.

Q All right. And where was that done?

A I think that it was done three times. It was in the Correctional Institution on Seyms Street. Once at 95 Washington Street, when the gentleman went to plea. And again when he was sentenced, after the plea sentence investigation was completed.

Q And as far as you can recollect, was the recommendation that you communicated to Mr. Mone that would be made by the State's Attorney's Office, the same on each occasion you communicated it to him? Or did it change?

A When it was a matter of hard sense, it was a four or four and a half to nine. There had been preliminary negotiating, but it was four or four and a half to nine, and that was communicated to him. But a suspended sentence for Mrs. Mone.

Q And you specifically recollect the minimum as being either four or four and one half with respect to the Defendant?

A Yes.

Q Mr. Mone.

A Yes.

Q And you recollect the maximum as being nine?

A Yes, sir.

Q Do you remember the recommendation that Mr. Stoughton made at the time of sentencing?

A I thought it was either four or four and one-half to nine. I thought it was four and a half. It might have been four.

Q Had you discussed the length of the sentence that was to be recommended by the State's Attorney with Mr. Mone's parents at any time?

A Yes. I believe I did.

Q And what had you communicated to them about the length of the sentence that would be recommended if he pleaded guilty?

A My recollection is that Mr. and Mrs. Mone came to my office on several occasions, having driven down here from Massachusetts. At this -- on these visits, initially we were still negotiating with the State's Attorney's Office. But when it was crystalized that if Mrs. Mone took a suspended sentence, Mr. Mone would get a sentence of either four or four and one-half to nine, and I communicated that to them. I believe in my office, and also the morning of his sentencing in Superior Court.

Q Did you take any notes, by the way, concerning your conversations with members of the State's Attorney's Office, about recommendations?

A I do not think that I did, but I can check my file.

Q Would you, please?

(The witness looked at a file folder.)

A No, sir. I have no written notes on the proposed --
at the time.

Q Okay. Let me ask you this, then, Mr. Egan, and perhaps I did before. I'm just not certain if I put it this way. Was the recommendation Mr. Stoughton made on the case of Mr. Mone on the date of sentencing any different than the recommendation that you had anticipated he would make, in accordance with your prior discussions?

A No, sir. It was not followed, but it was no different.

Q And if you can answer this question -- if Mr. Stoughton had made a recommendation which was for a longer sentence than the one he had represented to you would be made, would you have made comment on the record at that time?

A I would have been obliged to, sir. Yes, sir.

Q After the recommendation was made on the date of sentencing, did Mr. Mone say -- and while you were in front of Judge Danahey, did Mr. Mone say anything to you about wanting to withdraw the guilty plea?

A I am sure that he did not.

Q Could you express to us what Mr. Mone's primary concerns were about the overall situation that he and his wife were

in, once you were retained as counsel?

A Mr. Mone had always professed to me a very high respect for his wife. A deep affection for her. And he felt that her involvement in this matter was innocent. As I recall, she has allegedly made several phone calls in connection with the case, and that was about the extent of her involvement. He didn't want her, under any circumstances, to pay for anything that he had done. And I believe every time I saw him, he was extremely concerned as to her welfare, as to the possibility of her being incarcerated and as to her being mixed up in something which he says she didn't comprehend or wasn't responsible for.

Q Did you and Mr. Mone discuss at any time any special legal defense that might be interposed in this particular case?

A Well, because of the bizarre nature of Mr. Mone's explanation of the offense, I engaged the services of a psychiatrist, who then engaged the services of a psychologist, because he was so perplexed at the explanation Mr. Mone had given him of the situation. And he gave me an opinion that Mr. Mone was, as now, capable of understanding trial, and he was exceedingly perplexed by Mr. Mone's explanation of the situation.

MR. CHURGIN: Your Honor, if I might object at this time. I don't think that answer has been responsive to the question. Could I hear the question again?

THE COURT: Read the question, Mr. Reporter.

(The reporter read the last question and answer.)

MR. CHURGIN: I don't think the answer has been responsive. I would ask that it be stricken.

THE COURT: Technically, it is not responsive. It calls for conversations with Mr. Mone. I will strike the answer.

THE WITNESS: We discussed a possible plea of insanity.

BY MR. BANBURY:

Q And did you, yourself, make a professional evaluation as to that possibility?

A Yes. I have one made.

Q And what was the result of that, in terms of your own evaluation?

A I believe the man was capable of standing trial.

Q Well, let me just ask you another question along that line.

From your conversations with Mr. Mone, did you think there was any factual defense -- defense of denial to the charges?

A No, sir. I did not.

Q All right. Now, subsequent to your discussing the case with the State's Attorney's office or members of the State's

Attorney's Office, or at any time from when you first got into this case, did you say anything to Mr. Mone about a possible sentence of one to three years?

A I can recall no such conversation with the young man.

Q Did you say anything to his wife, Nanette, about Mr. Mone getting a sentence of one to three years?

A To the best of my recollection, my conversations with Mrs. Mone were to the effect that he desperately wanted her not to be involved in the situation, and that I believed I could get her a suspended sentence. I think that was -- I believe I did not have any discussion with Mrs. Mone, because I think I only saw her twice -- maybe three times at the most -- and I am almost sure that I did not discuss the sentence that he would serve.

Q All right. And in your conversations with Mr. Mone's parents, did you at any time discuss the possibility of Mr. Mone receiving a one to three sentence?

A Initially, I was -- it was impossible to evaluate what was going to happen in the case, and on a kidnap charge, which the maximum is twenty years, I believe that I could never have suggested a one to three possibility.

Q Now, do you recall some conversation with Mr. Mone, the Defendant -- not the father -- which involved the role of the Judge who would be handling the case?

A Yes, I do.

Q What was the nature of that conversation?

A As the sentencing day approached, Mr. Mone was talking to me in the Hartford Correctional Institution. And he said to me, becoming very apprehensive about the sentence, "Who will be hearing the case?" And I said, "I believe Judge Danahey will be the one who sentences you." And he said, "Do you know Judge Danahey?" And I said, "Yes, I do. He is a friend of mine," which was apparently a serious error, because I would have said the same thing about Judge Naruk, but from that day on I will not say that when I talk to anybody in the Correctional Institution. I mean I knew him, as I know practically every judge on the Superior Court Bench, as I have been practicing here with them or in front of them for almost thirty years.

Q And --

A There was no implication in the remark intended by me that he was anything but an acquaintance and that I knew him. Not that he would in any way that my association with him slant his judgment or anything of that kind. But I did say, and it is absolutely true -- "Do you know Judge Danahey?" I said, "Yes. He is a friend of mine." That's a fact.

Q Now, Mr. Egan, just to carry our conversation in a broader sense, what I asked you about before -- at any time did

A That's right -- now. Ultimately. When we got into the plea bargaining stage and he had talked to me, being most insistent that she get a suspended sentence, at that time he indicated to me that he would -- when I would get a recommendation from the State's Attorney's Office that he would consider whether he would plead guilty or not. But the thing always was that she had to have a suspended sentence, and in fact, he wouldn't be put to plea the morning that they were both presented unless she went on first, as she did, and did get the suspended sentence. And I believe the record will show that, sir. I know it will show it.

Q What happened on the day of the sentencing? Who went first?

A Mrs. Mone. Mrs. Mone went first. He simply said, "I am not going to have something go wrong in this. I want her to be sentenced, and when she is, I will live up to my agreement."

Q So, in other words, he indicated to you he would change that plea if there was no suspended sentence for his wife?

A Yes, he did. Yes, he did.

Q Do you recall, on the day of the plea, when they were asked if there were any conditions on his plea, he said, "None."

A Yes. I believe that is correct.

I am in criminal court on a sentencing at least once a week, I would say, and always the Judges in Connecticut say, advising the party --

Q I realize they say that, but after you made, you know -- from the wording in that letter, would you advise counsel they could ignore what the Judge said? That -- because it would be impossible for them to give that sentence? Anything other than what was agreed upon?

A I think a Judge can do anything he wants to do. Sir Paul Banon Grandof, when I was at Oxford, used to say, "Law (Phonetic)" is what the Courts do" and I have never heard a better definition. That is how it works, in my opinion. That is what the Courts do.

Q Then can you explain, why you indicated to the Petitioner that it was impossible for the Judge to do what he did?

A Because that was a later decision.

Q Okay. I won't press it.

A I don't know what you want me to say, but I certainly wrote that letter.

Q When you entered into negotiations with the State's Attorney's Office, were you negotiating both cases together -- both John and Nan?

A Yes, I believe I was. That's the very first time probably not, because I had not seen Mrs. Mone, and as I say,

I cannot be honest and absolutely state categorically that I did go and see her in Niantic. It is my recollection that I did, but in any event, the very first conversation that I had with someone in the State's Attorney's Office was, I believe, just related to Mr. Mone, but then after that it was always the two of them, sir.

Q It was the two of them together, and how they would both plead and respond together?

A Yes, sir. And what he wanted particularly for his wife.

MR. CHURGIN: I have no further questions, Your Honor.

THE COURT: Redirect.

MR. BANBURY: Nothing further.

BY THE COURT:

Q Mr. Egan, you have testified that a sentence of four to four and one-half to nine, in your letter to Mr. Mone back on January 14, 1974, speaks of such a sentence, and is qualified by words such as, "as I recall," and then the next sentence says, "The exact details are really taken from my memory and they may be approximate at present."

A Yes, sir.

Q That was a letter of a year ago. January 14, 1974.

A Yes.

Q If I told you that the recommendation that was made by

sentencing in general.

THE COURT: Well, if there is no objection.

MR. BANBURY: I haven't heard the question.

BY MR. CHURGIN:

Q Was Mr. and Mrs. Mone charged with the same crime? Would it surprise you if I told you that both were charged with identical crimes?

A No, it wouldn't surprise me.

Q Okay. When Mrs. Mone was charged with kidnapping, as Mr. Mone, received a suspended sentence, did she not?

A Yes, sir.

MR. CHURGIN: Thank you.

MR. BANBURY: I have no further questions.

THE COURT: All right. You may step down, Mr. Egan.

THE WITNESS: Thank you very much, Your Honor.

(Witness excused.)

MR. BANBURY: Respondents rest, and this is based on the understanding we have arrived at, that there is no claim that the recommendation made was different than the recommendation which had been indicated would be made, and on that basis, the Respondent rests.

(Discussion between Court and counsel. Plaintiff's brief to be filed on or before April 1, 1975, and the

STIPULATION AS TO WITNESSES

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JOHN H. MONE,

Petitioner,

vs.

CARL ROBINSON, Warden
Connecticut Correctional Institution,
Somers, Connecticut,

Respondent,

Civil Action No. H-75-206

STIPULATION OF PARTIES

It is hereby stipulated and agreed by counsel for both parties hereto that if the following persons were called as witnesses in this action, each would testify to the facts set forth in their affidavits, reports, and letters identified below by exhibit numbers set opposite the name of each witness, and it is further stipulated that the information contained in the exhibits attached hereto may, subject to the approval of this honorable court, be admitted as the sworn testimony of each witness referred to herein, as follows:

1. Doctor Wayne Owen
200 Retreat Avenue
Hartford, Connecticut
Affidavit dated October 7, 1976, a copy of which is attached hereto as Exhibit "A".
2. Doctor Wayne Owen
200 Retreat Avenue
Hartford, Connecticut
Psychological Report dated May 30, 1973, a copy of which is attached hereto as Exhibit "B".

Stipulation as to Witnesses

3. Doctor Ann Oberkirch
210 Prospect Street
New Haven, Connecticut
Affidavit dated October 7, 1976, a copy of which is attached hereto as Exhibit "C".
4. Doctor Donald R. Grayson
60 Washington Street
Hartford, Connecticut
Psychiatric report dated May 25, 1973, a copy of which is attached hereto as Exhibit "D".
5. Doctor Donald R. Grayson
60 Washington Street
Hartford, Connecticut
Letter to Attorney Michael J. DeGregorio dated January 15, 1976, a copy of which is attached hereto as Exhibit "E".

RESPECTFULLY SUBMITTED

By

Stephen Wizner
Dennis Curtis
Mary F. Keller
Judith M. Mears
Attorneys for Petitioner
Ann F. Thomas Law Student Intern
pursuant to Local Rule 26
127 Wall Street
New Haven, Connecticut 06520
(203) 436-2210

By

Michael J. DeGregorio
Co-counsel for Petitioner
27 North Street
Pittsfield, Massachusetts 01201
(413) 448-8511

BY

Richard F. Banbury
Assistant State's Attorney
95 Washington Street
Hartford, Connecticut 06106
566-3190
Attorney for Respondent

EXHIBIT A--AFFIDAVIT OF WAYNE OWEN

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN H. MONE

-vs-

CARL ROBINSON, Warden

:
:
:
:
:

Civil Action No. H-75-296

AFFIDAVIT

State of Connecticut }
County of Hartford } ss.:

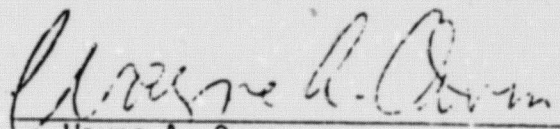
WAYNE OWEN, being duly sworn, deposes and says:

1. That I am a duly licensed clinical psychologist in the State of Connecticut, with offices at 200 Retreat Avenue, Hartford, Connecticut.
2. That on or about May 30, 1973, at the request of Donald R. Grayson, I interviewed John H. Mone and administered various psychological tests.
3. That a true copy of my psychological report dated May 30, 1973 is attached to this affidavit.
4. Based upon my interview and observations of the said John H. Mone and the results of the tests administered, I am of the opinion that the said John H. Mone was in a paranoid schizophrenic state on May 30, 1973 and was delusional.
5. It is my further opinion that the said John H. Mone's alleged involvement in an extortion plot as described in the case of State vs. John H. Mone, Superior Court, Hartford County, Number 36246 was related to his delusional system of thinking and that the said John H. Mone was unable to appreciate the wrongfulness of his conduct.

-2-

6. The psychological report which is attached hereto was delivered to Doctor Donald Grayson on or about May 30, 1973.

7. I was never requested by anyone to appear in court in the case of State vs. John H. Mone, Superior Court, Hartford County, Number 36246 and do not know whether my report was ever introduced or used in that case.


Wayne A. Owen

Sworn to and subscribed before me this
7th day of October, 1976.

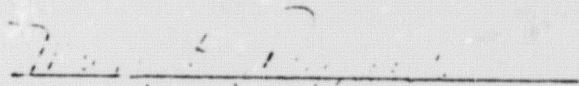

Notary Public
1981

EXHIBIT B--REPORT OF WAYNE OWEN

Mr. John Mone

PSYCHOLOGICAL REPORT

May 30, 1973

TESTS ADMINISTERED:

Rorschach
Sentence Completion
Draw-A-Person
Wechsler Adult Intelligence Scale (Doppelt Version)

TEST RESULTS:

Estimated Full Scale IQ 119

BEHAVIORAL OBSERVATIONS:

Mr. Mone, a white, married, 34 year old man, was seen for psychological testing at the Syms Street jail where he is presently incarcerated. While he was friendly and cooperative to the testing, he seemed very anxious and uncomfortable in the testing situation. His voice was shaking and he seemed close to tears at times. Mr. Mone complied with ~~the~~ the psychologists. However, his response on the Rorschach ink blot test was highly unusual, in that after the first two blots, he departed from the psychologist's instructions to tell what he saw on the blots and begin describing what appeared to be a well defined delusional system involving his cats. Initially he expressed some hesitation over talking about this subject and said: "I shouldn't have told you about the cats. It might be the only salvation we have. I'm not supposed to tell anyone but I have a rare and beautiful gift to be able to talk to cats." After Mr. Mone had talked about his "gift" in some detail, he expressed relief that he had been able to talk about it with the psychologist.

INTERPRETATION OF TEST FINDINGS:

On a standard test of intelligence, Mr. Mone obtained an estimated Full Scale IQ of 119, which places him at the top of the bright average range of intelligence. This appears to be a minimal estimate however, as there was considerable variability in Mr. Mone's cognitive functioning, with intelligence subtest scores ranging from the very superior on a subtest measuring verbal ability skills to only the average level on a subtest measuring visual-motor integrative abilities. The inconsistency in Mr. Mone's intellectual functioning appears to result from the anxiety that he is experiencing. Mr. Mone was aware that he was not performing as well as he might, and he said: "I normally wouldn't be this slow at something like this." Mr. Mone's optimal level of intellectual functioning appears to be most accurately reflected by his very superior vocabulary skills.

On the more highly structured intelligence test, there was no evidence of confused or disorganized thinking. However, on the less highly structured Rorschach ink blot test, Mr. Mone produced many highly unusual and bizarre responses, indicative of a schizophrenic thinking disorder. Many of these responses involved cats of some sort and on the fourth Rorschach blot, Mr. Mone said: "I see something else in this blot, but I would prefer not to say what it is." With some encouragement from the psychologist, he went on to describe what appeared to be a well defined delusional system involving cats. He said in this regard: "I have a peculiarity, a talent. I can speak with some of my cats."

Mr. John Mone

-2-

May 30, 1973

This ink blot looks like one of my cats named 'Kong', now known as 'Anacka'. He often appears as something different from a cat but nothing that I could really describe. He's been a raccoon among other things. These cats were put on earth to observe the human condition and try to improve it. They use the bodies of either cats or men and walk among us. They have councils and watchers. Most of my cats are watchers. They observe the condition of this world and God uses them as messengers. One of my cats, 'Saramus' is really the mystical one. I only glimpse his power now and then. Sometimes I think he's going to be the next Messiah, but he's in hiding now."

Mr. Mone went on to explain further: "Sometimes the cats use telepathy but they are careful not to invade the privacy of people's minds. They use a response that effects the auditory. You hear them even though they don't speak with their mouths. I haven't heard from the cats at all in jail though. Maybe I failed them in getting involved in the evil part of this. But we have cleansed evil out of many areas. It had to be done physically in Waterbury. But Waterbury was the territory of 'Amenta', one of the cats. The code that the cats proposed to me was better than the codes we've been living by and it really started making religion make sense to me. Certain battles must be fought before we can achieve 'pleasance'. 'Pleasance' corresponds to the millennium in the Bible."

As the foregoing material indicates, Mr. Mone's thinking can be highly unusual and goes beyond the bounds of reality considerations. In his efforts to cope with his own hostile and aggressive impulses, he has developed an elaborate delusional system in which the evils of the world will be dealt with by his cats. The confusion and contradictory emotions which Mr. Mone is experiencing were reflected in his highly unusual response to the second Rorschach blot. He said: "I see the very poor, confused condition of this world. It's all contradictory. There's peace and love and brotherhood and antagonism." In view of the many distortions in reality testing evident on the Rorschach test, the diagnosis offered is that of a paranoid schizophrenic disorder.

Mr. Mone appears to have little insight into his emotional problems. Thus he said on the Sentence Completion Test: To me the future looks "quite good. I think that eventually we will win the battle and have "pleasance". But at times I am afraid of failing in my mission to get rid of evil. I just hope that I didn't fail this time. I always had the feelings that something should be done, but I never had any guidance before the cats came. I don't know if I belong in jail or if I was weak in allowing myself to be intimidated. But I'm not a criminal." In view of Mr. Mone's very active fantasy life and his tendency to lapse into psychotic thinking regarding the issues of good and evil in his life, it seems highly possible that his recent alleged involvement in an extortion plot may be related to his delusional system. In this delusional system he appears to feel compelled to expose or otherwise fight what he feels to be the evil in the world. Much of his behavior in this regard appears to be psychotically motivated, with inadequate consideration given to reality considerations.

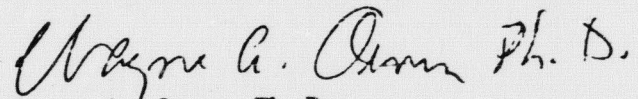
Mr. John Mone

3-

May 30, 1961

SUMMARY:

Mr. Mone obtained an estimated Full Scale IQ of 119 which places him in the bright average range of intelligence. However, there was much inconsistency in his cognitive functioning, and this appears to be a minimal intellectual estimate. On the Rorschach ink blot test, Mr. Mone produced many highly unusual and bizarre responses, indicative of a schizophrenic thinking disorder. He described what appeared to be a well defined delusional system involving his cats and how they are fighting evil in the world. In view of the many distortions in reality testing evident on the Rorschach test, the diagnosis offered is that of a paranoid schizophrenic disorder. As regards Mr. Mone's very active fantasy life and tendency to lapse into psychotic thinking regarding the issues of good and evil, it seems highly possible that his recent alleged involvement in an extortion plot may be related to his delusional system of thinking.



Wayne A. Owen, Ph.D.
Clinical Psychologist
Connecticut License #287

EXHIBIT C--AFFIDAVIT OF ANN OBERKIRCH

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JOHN H. MONE

-vs-

CARL ROBINSON, Warden

:
:
:
:
:

Civil Action No. H-75-296

AFFIDAVIT

State of Connecticut)
County of New Haven) ss.:

ANN OBERKIRCH, being duly sworn, deposes and says:

1. That I am a duly licensed psychiatrist in the State of Connecticut, with offices at 210 Prospect Street, New Haven, Connecticut.

2. That John Mone was admitted to the Whiting Forensic Institute on September 19, 1973 and discharged from said institute on September 12, 1975.

3. That I personally treated the said John H. Mone during his stay at the Whiting Forensic Institute.

4. That the said John H. Mone's diagnosis upon admission to said Whiting Forensic Institute was paranoid schizophrenia and his final official diagnosis on September 11, 1975 was paranoid schizophrenia.

5. That based upon my treatment and observation of Mr. Mone and his history obtained from the patient, and family members, and prior treatment records I was able to form an opinion as to the said John H. Mone's mental state at the time of the commission of the alleged crime described in the case of State v. John H. Mone, Superior Court, Hartford, Connecticut, Number 36246.

6. That my opinion is that at the time of said alleged crime the said John H. Mone was psychotic and in a severe paranoid schizophrenic state.

-2-

7. That based upon my treatment, observations, and history taken as aforesaid, I am of the further opinion that the alleged crime committed by the said John H. Mone was related to and produced by his psychotic state of mind and delusional system of thinking during that period of time and that the said John H. Mone, as a result of his delusional system of thinking, was unable to appreciate the wrongfulness of his conduct.

Ann Oberkirch MD
Ann Oberkirch, M.D.

Sworn to and subscribed before
me this 7 day of OCTOBER, 1976.

Stephen Wilgus
Commissioner of the Superior Court
of the State of Connecticut

EXHIBIT D--REPORT OF DR. DONALD R. GRAYSON

DONALD R. GRAYSON, M. D.
SUITE 910
60 WASHINGTON STREET
HARTFORD, CONNECTICUT 06106
—
TELEPHONE 525-8163

May 25, 1973

James N. Egan, Esquire
Attorney At Law
60 Washington Street
Hartford, Connecticut

Dear Mr. Egan,

This report is written in regard to Mr. John Harris Mone, whom you requested that I see for a psychiatric evaluation.

I met with Mr. Mone on May 23, 1973 for about two and one-half hours at The Hartford Jail. He presented as a very clean, neat, bespectacled, overweight man, who appeared his stated age of 34. He was quite fidgety and his hands were tremulous. This was most marked during the early part of the interview. He verbalized freely in a logical goal directed fashion with some diminution in inflection at a normal rate. He was precise in his speech and as a result he did not utilize unnecessary phrases to make his points. He repeatedly expressed with emphasis the following ideas: that he felt he had a mission to accomplish of doing good for others; that he never intentionally has hurt others; and that he has been greatly upset by the corruption and cruelty that he has seen in the world around him. He denied being suspicious of others, although he admitted that his trusting of others had frequently resulted in his being let down. He stated that he has an uncanny ability to relate to animals, especially cats. He reported that for the past year he has been able to communicate with cats. At first he stated that this was by a form of telepathy. He then went on to add that when he talks to cats, they speak to him. He added that he sees cats as watching mankind as an aid to God in working against Satan. He said that cats have urged him to exorcise evil from the world. He did not sound completely convincing as he discussed this and he did state that he has been skeptical about this, adding, "I'm sure you'll want to send me to the State Mental Hospital when you hear all this." He has reportedly been claustrophobic since childhood. He also claimed that he has been a compulsive hand washer since childhood. He used the word ablution to define this compulsion, which surprised the undersigned by his familiarity with the terminology. He denied having obsessions and dissociative type symptoms. He described having excess fatigue, which could be depicted as neurasthenia.

James H. Egan, Esquire
Re: John Harris Mone

May 25, 1973

He described having had probably conversion symptoms, which consisted of numbness of his hands when anxious as well as occasional episodes of hyperventilation. He claimed that he is hypochondriacal; frequently fearing chest pains as a possible sign of a heart attack. He did not appear to be hallucinating at any time during the interview, but as previously mentioned, he did claim that he has heard cats talk to him, but only when he has been with them. His affect was appropriate to his expressed thought, but it was constricted in range. He admitted to having felt anxious for years. He said he was despondent, but he denied crying spells and suicidal intent. At no time did he cry during the interview. He did not express guilt over the alleged crime, but instead depicted himself as a helpless pawn in a situation which was beyond his control. This will be described in greater detail later in this report. (No defect was noted in orientation, memory, attention, concentration, fund of general information, calculation ability, abstraction ability, or reasoning and judgment for simple theoretical problems.) He appeared to be of near genius intellectual capacity as manifested by his mastery of vocabulary, his above average fund of information, his superior abstraction ability and his ability to express himself clearly.

The following information regarding his past history was given readily. He was born in Port Jay, New York on February 15, 1939. He claimed that he was considered dead at birth but was revived. He added that the delivery was very difficult for his mother. He reportedly passed the developmental milestones at the appropriate times. He described the following neuropathic traits of childhood: intermittent nailbiting, claustrophobia; overweight state secondary to excess eating; and compulsive hand washing. He explained, "this probably resulted because my mother was a nut about cleanliness." He described himself as always having a few friends at a time, but he firmly denied that he had ever been a loner. He said that he was "always extremely polite." His fifty-five year old father was said to have crippling arthritis of the spine. His father completed fourteen years in the Army, which he left with the rank of Captain. He reportedly insisted that John never show any sign of fear of anything. He stated that his father was not affectionate towards him and depicted his own boyhood feelings for his father as "a healthy respect." His fifty-four year old mother was described as "a very sweet woman....extremely affectionate...one who gets overly upset by the problems of others." He stated that his father

- 3 -

James N. Egan, Esquire

Re: John Harris Mone

May 25, 1973

referred to her relationship with John as "smother love." He has a twenty-nine year old married sister, Frances, who he described in positive terms. His developmental years were characterized by approximately seven moves around this country in addition to four years in Germany (ages 8-13). The family settled in Long Island, New York in the mid 1950's after his father left the Army rather than take his family to the Orient as dictated by his latest military orders. The patient graduated with about a 90 average from West Islip High School in 1958. He said that his family expected A's. He said that he received a New York State Regent Scholarship to C.W. Post College. He said that because he could not apply himself and had no goal, he left after two years in 1960. At that point he took a job as a bank teller. He claimed that the job went well until a friend (immediately the word was changed to acquaintance) came to him and allegedly demanded \$1000.00. He claims that he gave him the money because the acquaintance allegedly threatened to harm his family if he did not comply. When asked why he did not contact the police, he stated in a vague way that he did not have confidence that his family would be adequately protected. He was arrested and reportedly received a suspended sentence as well as 18 months of probation. He married in August, 1962. Her parents reportedly opposed this because he was Protestant and his wife was Catholic, in addition to the fact that he was driving a Good Humor truck at the time. The couple moved to Baltimore, where he worked for three years for two car dealers as a car salesman. He reportedly earned \$12,000.00 per year. Reportedly, he quit because the stress was too great and the practices below his standards. He then drove a laundry truck for six months prior to returning to Farmington, Connecticut in 1966. He worked for Servend until 1970 as an office manager for \$8,000.00 a year. At that point he started his own Recreational Vehicle business in Lee, Massachusetts. He reported that the vehicle dealers did not honor their agreements and thus he ended up losing \$10,000.00. From October, 1971 until March, 1972 he worked as an assistant office manager for Swift & Company in Hartford for \$125.00 per week. He reportedly got depressed and quit when the only opportunity for a salary increase necessitated his moving to Chicago. After that he reportedly was laid up for nine months with a slipped intervertebral disc. For almost a year he and his family have lived in three trailers on family owned lots in Otis, Massachusetts. He reported that his marriage is a good one, but that he wishes he had children. He indicated that this was secondary to his

James N. Egan, Esquire
Re: John Harris Mone

May 25, 1973

own sterility, which probably resulted from mumps orchitis during childhood. He denied difficulty with drugs or alcohol, and further denied problems in the sexual area. He states that he has always fought when confronted, but that he has avoided trouble when possible. He claims that for the last five years he has utilized Librium and Valium to help his tension, gastrointestinal discomfort and headaches. He denies ever having sought psychiatric treatment.

The following is his account of the crime which was allegedly perpetrated by him: He claimed that he became upset when he heard that Waterbury, Connecticut was a corrupt town. He said "I thought the Mafia, the police and the Rat Pack (a motorcycle gang) were working together." He said that some cats urged him to do something about the situation. In February, 1973 he said that he decided to write an expose. He said he assumed the name of Mr. Argus, which stood for Author's Research on Gangs Unitized Society. He reportedly told his family of his plan to write a book. In an attempt to gain the confidence of The Rat Pack, he reportedly had his wife call them and propose their involvement in a crime that a large organization was supposedly trying to arrange. He reported that this would hopefully lead to his obtaining names of mafia connections. He claimed that he had his wife make further calls to the gang. One afternoon he said he went to Waterbury, where he said he taped a plan under the cover of a toilet bowl in a MacDonald's Restaurant. He claimed that a tall, black man, who allegedly identified himself as a policeman, asked him what he was doing there. He said he became frightened and showed the plan to the man. He said the man was armed and threatened to harm his family if he did not follow through with a revised plan. He said the man told him to send a note to Harvey Lipman. He said he was told that after going to Woodstock to pick up \$75,000.00 (\$50,000.00 for the black policeman and \$25,000.00 for the Rat Pack), he was then supposed to take the money to Logan Airport to meet the other man. When he was apprehended by the police he said he pleaded to be taken to Logan in order to catch the man who had allegedly threatened his family. He admitted that he is confused by what happened. He expressed no guilt over his part in this affair or concern over what impact this may have had on the victimized family. He was vague as to why he had not contacted the police, if indeed he had been or thought he had been threatened.

In summary, there was no gross evidence of organic brain disease. He indicated that he has experienced a number of neurotic symptoms: anxiety, depression, hypochondriasis,

A 69

Exhibit D--Report of Dr. Donald R. Grayson

- 5 -

James M. Egan, Esquire
Re: John Harris Mone

May 25, 1973

claustrophobia, compulsive hand washing, neurasthenia, and conversion symptoms of numbness of his hands. His story about the cats sounds definitively psychotic, but the undersigned cannot completely believe this man's story. His familiarity with psychiatric terminology, his fluent goal directed speech, his intact abstraction ability, his great insight into himself and his psychological understanding of the needs and conflicts of those he knows well, his past apparent academic and occupational successes, his frustration with his sterility, his anger over failing in business, his probable negative feelings for automobile dealers, his tight economic situation, and his past history of a crime make the undersigned feel that he is probably not psychotic, but is instead a sociopathic personality. However, a battery of psychological testing is strongly recommended to hopefully further clarify this assessment.

If you have any further questions and/or would like clarification of above, please do not hesitate to contact me.

Sincerely yours,

DRG:jb
Enclosure

Donald R. Grayson, M.D.

A 70

EXHIBIT E--LETTER DATED JANUARY 15, 1976

DONALD R. GRAYSON, M. D.
SUITE 910
60 WASHINGTON STREET
HARTFORD, CONNECTICUT 06106
—
TELEPHONE 525-8163

January 15, 1976

Michael DeGregorio, Esquire
Attorney at Law
27 North Street
Pittsfield, Mass. 01201

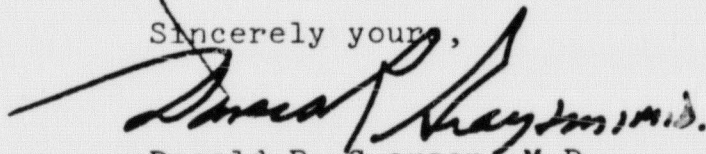
Dear Mr. DeGregorio:

This letter is written to supplement our conversation of January 12, 1976, regarding Mr. John Harris Mone, whom you represent.

As I told you and did indicate in my report to Mr. Egan, I strongly recommended psychological testing for Mr. Mone to help provide further information which might be helpful in determining whether he was suffering from a psychotic illness. The testing report that I received from Dr. Owen did raise further doubt in my mind as to whether Mr. Mone was suffering from a schizophrenic illness, because I have worked closely with Dr. Owen over the years, have great respect for his testing ability, and have rarely disagreed with his conclusions. However, I must add, to the best of my recollection I have never referred a patient to him for testing, who, in my opinion, had anything to gain by attempting to appear sicker than he actually may have been. I must admit I do not know how accurately Dr. Owen or any other testing psychologist can determine whether the test responses are genuine or distorted. I suggest that you clarify this further with him. On the basis of the testing report, however, I feel another psychiatric examination and possibly repeated psychologic testing by other clinicians was indicated. I never received a formal request for a further follow-up report subsequent to sending in my evaluation of Mr. Mone, which was sent prior to my having received Dr. Owen's report.

If you have any further questions and/or would like clarification of the above, please do not hesitate to contact me.

Sincerely yours,


Donald R. Grayson, M.D.

DRG:djd

MEMORANDUM OF DECISION DATED APRIL 14, 1973
(STATE HABEAS CORPUS CASE)

NO. 23692

JOHN H. MONE

v.

ABRAHAM M. ZEICHNER

:

:

:

SUPERIOR COURT

MIDDLESEX COUNTY

APRIL 14, 1975

MEMORANDUM OF DECISION

The petitioner, who is currently confined at the Whiting Forensic Institute, has brought the within habeas corpus petition claiming that his guilty plea to a charge of Conspiracy to Commit Kidnapping, Second Degree, was not voluntary and that his trial counsel's representation did not constitute effective assistance of counsel.

I.

The testimony at the hearing by petitioner and members of his family was that his guilty plea was based upon an agreement that he was to receive a sentence of one to three years and that his wife, who was a co-defendant with him, was to receive a suspended sentence. Subsequently, it was asserted, the recommended sentence for the petitioner was to be changed to not less than four nor more than fifteen years. The actual sentence imposed by the trial Court was not less than nine nor more than twenty years.

In addition to the testimony presented, this Court has examined the transcripts of the petitioner's guilty plea and

Memorandum of Decision dated April 14, 1973
(State Habeas Corpus Case)

sentence proceedings. Based on all of said evidence, the Court finds no merit to the claim that petitioner's guilty plea was involuntary and coerced. No credence is given to the testimony that there was an arrangement for a one to three year sentence or that the petitioner did not plead voluntarily. It is patently clear from the Court's observations at the time of the hearing that the petitioner is a person of a superior, albeit perverted intelligence, who is capable of manipulating those close to him into believing what he wants them to believe. His claims of an involuntary plea are clearly grounded in his dissatisfaction with the lengthy sentence which he received. They are totally unsupported by the record of prior court proceedings.

In Connecticut, a sentencing court is not bound by any recommendation of the prosecutor or defense counsel as to the penalty to be imposed. Szarwak v. Warden, 36 Conn. Law Journal (No. 4), pgs. 1, 5. An application for a writ of habeas corpus can not serve as a substitute for the statutory procedure provided for review of a criminal sentence which is claimed to be unduly harsh. See Secs. 51-194 through 51-196 of the General Statutes.

II.

Neither is there any merit to the petitioner's claim that he was denied effective assistance of counsel because both he and his wife were represented by the same attorney at the time of their respective pleas and sentencing. There is no indication

that there were any conflicting or inconsistent defenses on the part of either petitioner or his wife in either the original case or the present proceeding. The fact that the petitioner was the more culpable of the two was conceded by everyone, including himself. For a joint representation to amount to a denial of one's constitutional right to the effective assistance of counsel, it must be shown by clear and convincing evidence that some real conflict of interest exists between the joint co-defendants. Palmer v. Adams, 162 Conn. 316, 328-329, and cases cited therein. Such conflict must be grounded in something more than mere speculation and conjecture which is based upon hindsight. In the instant case, no such evidence of conflict was produced.

The application for a writ of habeas corpus is dismissed for the reasons stated.

Naruk, J.

A 74

MEMORANDUM OF DECISION DATED MARCH 26, 1977
(FEDERAL HABEAS CORPUS CASE)

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FILED
MAR 29 11 20 AM '77
U.S. DISTRICT COURT
HARTFORD, CONN.

JOHN H. MONE

:

v.

:

CIVIL NO. H-75-296

CARL ROBINSON, Warden,
Connecticut Correctional
Institution at Somers

:

:

MEMORANDUM OF DECISION

Petitioner John H. Mone is currently incarcerated at the Connecticut Correctional Institution at Somers. He is serving a sentence of nine to twenty years as a result of his 1973 plea of guilty to the charge of conspiracy to commit kidnapping in the second degree. Following his conviction, petitioner applied for a writ of habeas corpus in the Superior Court for Middlesex County. This application was dismissed by Judge Naruk in an opinion filed April 15, 1975. Mone v. Zeichner, Docket No. 23692 (Superior Ct. Middlesex Cnty.). Judge Naruk also denied a Petition for Certification for review to the Connecticut Supreme Court. Jurisdiction exists in this court pursuant to 28 U.S.C. § 2254.^{1/}

The principal question raised in this petition for habeas relief concerns Mone's claim that he was deprived of

1/

Petitioner has not sought a new evidentiary hearing in federal court. Rather he prefers to rely on certain affidavits and the record made in the state system during his guilty plea, sentencing, and habeas corpus hearings.

his sixth amendment right to the effective assistance of counsel because the same attorney represented both him and his wife Nanette at their plea and sentencing.^{2/} Petitioner and his wife were involved in a bizarre plan to kidnap a well-to-do Bloomfield man. They contacted members of a motorcycle gang to help them in their scheme. Through the motorcycle gang, the police became aware of the plot and prevented any harm coming to the family of the intended victim. Mone was arrested on April 3, 1973, for the crimes of conspiracy to commit kidnapping in the second degree, conspiracy to commit larceny by extortion, and accessory to attempted larceny by extortion. Mrs. Mone was arrested April 22, 1973, and charged with the same crimes.

With the aid of petitioner's parents, the two Mones retained Attorney James Egan as counsel.^{3/} Egan arranged a plea bargain for the two defendants whereby both would plead guilty and the state's attorney would recommend a suspended sentence for Mrs. Mone and a term of four to fifteen years

2/

Petitioner also contends that his guilty plea was involuntary because induced by misrepresentations from counsel. Since I grant relief on the basis of petitioner's first claim, I express no opinion on the merits of this second argument.

3/

The financial aspects of the retention are unclear. Petitioner's mother testified at the state habeas hearing that Egan agreed to defend the couple for \$1,000. Whether this retainer represented Egan's total fee should a trial have proved necessary is not apparent. Transcript at 71-73, Mone v. Zeichner, supra.

for petitioner. On June 6, 1973, before Judge Dannehy in Hartford County Superior Court, Mone pled guilty to the charge of conspiracy to commit kidnapping in the second degree; his wife pled guilty to the crime of accessory to attempted larceny by extortion. The two were sentenced by Judge Dannehy on June 28, 1973, at which time Attorney Egan portrayed Mrs. Mone as an individual "misled grievously by her husband."^{4/} Judge Dannehy accepted the state's recommendation of a suspended sentence for Mrs. Mone, but then sentenced petitioner to a term of nine to twenty years. There is nothing in the record to demonstrate that either Attorney Egan or Judge Dannehy ever questioned petitioner about any possible conflict of interest arising out of the joint representation.

Petitioner argues that he was substantially prejudiced by the dual representation because Attorney Egan negotiated a "package deal" plea bargain for the defendants which secured significant advantages for the wife at Mone's expense and because Egan emphasized petitioner's culpability as a mitigating factor in Nanette Mone's defense. Judge Naruk rejected this claim and held that petitioner had failed to show by "clear and convincing evidence that some real conflict of interest" existed between the joint codefendants. Mone v. Zeichner, supra at 3.

^{4/}

Transcript at 3, State v. Nanette Mone, Docket No. 36265 (Superior Ct. Hartford Cnty. June 28, 1973), Exhibit C to Petitioner's Memorandum of Law in Opposition to Respondent's Motion to Dismiss and in Support of Petitioner's Application for Writ of Habeas Corpus.

The Legal Standard

The sixth amendment right to the effective assistance of counsel made applicable to the states in Gideon v. Wainwright, 372 U.S. 335 (1963), contemplates an attorney devoted solely to the interests of his client, whose advocacy and zeal is unimpaired by any conflict of loyalties. Glasser v. United States, 315 U.S. 60, 70 (1942). The right to such untrammelled and unimpaired assistance applies prior to trial in considering how to plead, Von Moltke v. Gillies, 332 U.S. 708 (1948), during trial, Glasser v. United States, supra, and at the time of sentencing, Mempa v. Rhay, 389 U.S. 128 (1967). See also United States ex rel. Hart v. Davenport, 478 F.2d 203, 209 (3d Cir. 1973). The rule in this Circuit has been repeatedly stated. The mere representation of two defendants by the same attorney does not automatically result in a deprivation of the right to counsel. United States v. Mari, 526 F.2d 117, 119 (2d Cir. 1975). See also Dukes v. Warden, 406 U.S. 250 (1972). It is settled that "some specific instance of prejudice, some real conflict of interest, resulting from a joint representation must be shown to exist before it can be said that an appellant has been denied the effective assistance of counsel." United States v. Lovano, 420 F.2d 769, 773 (2d Cir.), cert. denied, 397 U.S. 1071 (1970). This rule had been followed consistently by the Court of Appeals in cases on direct appeal, United States v.

Carrigan, 543 F.2d 1053 (2d Cir. 1976), on federal review by way of 28 U.S.C. § 2255, Abraham v. United States, ____ F.2d ____, Docket No. 76-2135/6 (2d Cir. Jan 21, 1977), and on state habeas corpus proceedings. United States ex rel. Ross v. LaVallee, 448 F.2d 552, 555 n.4 (2d Cir. 1971); United States ex rel. Hussey v. LaVallee, 428 F.2d 457, 458 (2d Cir. 1970), cert. denied, 400 U.S. 995 (1971). It is sufficient that petitioner demonstrate such prejudice by a preponderance of the evidence without mounting "clear and convincing" proof. United States v. Foster, 469 F.2d 1, 5 (1st Cir. 1972).

The state argues that Mone was not prejudiced by the dual representation because he supported counsel's strategy to shift the blame to him and exonerate his wife. The contention raises two questions: 1) whether Mone knowingly and intelligently waived any defect arising out of Egan's joint counsel, and 2) whether Mone was in fact prejudiced by the alleged conflict of interest.

Waiver

Waiver has traditionally been defined as the "intentional relinquishment or abandonment of a known right or privilege." Johnson v. Zerbst, 304 U.S. 458, 464 (1938). This court must indulge every reasonable presumption against the waiver of fundamental rights. Glasser v. United States, supra, 315 U.S. at 70. Judge Mulligan has recently outlined

*Memorandum of Decision dated March 26, 1977
(Federal Habeas Corpus Case)*

the procedure the trial court should follow when presented with codefendants represented by the same attorneys:

"When a potential conflict of interest arises, either where a court has assigned the same counsel to represent several defendants or where the same counsel has been retained by co-defendants in a criminal case, the proper course of action for the trial judge is to conduct a hearing to determine whether a conflict exists to the degree that a defendant may be prevented from receiving advice and assistance sufficient to afford him the quality of representation guaranteed by the Sixth Amendment. The defendant should be fully advised by the trial court of the facts underlying the potential conflict and be given the opportunity to express his views."

United States v. Carrigan, supra, 543 F.2d at 1055. See also United States v. DeBerry, 487 F.2d 448, 453 (2d Cir. 1973); United States v. Alberti, 470 F.2d 878, 881 (2d Cir. 1972), cert. denied, 411 U.S. 919 (1973); Morgan v. United States, 396 F.2d 110, 114 (2d Cir. 1968). While the procedure set out in Carrigan may not in itself be constitutionally required, the court's concern demonstrates that before a waiver of the constitutional right to the effective assistance of counsel may be found, there must be some personal inquiry of the defendant directed specially at the alleged conflict of interest.

Memorandum of Decision dated March 26, 1977
(Federal Habeas Corpus Case)

In this case, the trial judge did question Mone as to whether he was in general satisfied with Mr. Egan's counsel.^{5/}

5/

The court's questioning of petitioner at the time of his plea concerning his satisfaction with Mr. Egan's representation is set out below:

"THE COURT: Now, have you discussed fully with Mr. Egan the offense of conspiracy to commit kidnapping in the second degree charged against you in this information?

"THE DEFENDANT: Yes, I have.

"THE COURT: Did you discuss the plea of guilty that you made to the charge?

"THE DEFENDANT: Yes, sir.

"THE COURT: Are you satisfied with the advice and with the assistance that Mr. Egan has given you?

"THE DEFENDANT: Yes, sir, I am satisfied with his advice.

"THE COURT: Was there anything that you asked Mr. Egan to do for you that he didn't do?

"THE DEFENDANT: No, sir.

"THE COURT: Can you think of anything that he should have done for you that he didn't do?

"THE DEFENDANT: No, sir.

"THE COURT: You were originally charged in the information filed against you by the State's Attorney with two other offenses. Apparently, the State will not proceed against you on those first two counts. Is the fact that Mr. Egan was able to gain these concessions for you part of the reason for your satisfaction?

(The Defendant conferred with Mr. Egan.)

"THE DEFENDANT: Yes, sir.

"THE COURT: Was Mr. Egan's concern that you would fully understand the nature of this proceeding a concern that manifested itself in his

These inquiries did not, however, touch on any possible conflict of interest or prejudice to the petitioner resulting from Egan's dual representation. Rather, the court emphasized the fact that the state had agreed to drop two lesser counts against Mone in exchange for the plea of guilty on the conspiracy to kidnap charge and that Egan had arranged for a psychiatric test to determine petitioner's competency to

5/ cont'd

arranging for the various tests which you undertook before this plea? Is that part of the reason for your satisfaction?

(The Defendant conferred with Mr. Egan.)

"THE DEFENDANT: Yes, sir.

"THE COURT: Is that so?

"THE DEFENDANT: Yes, sir.

"THE COURT: So that in every way Mr. Egan represented you competently and adequately?

"THE DEFENDANT: Yes, sir.

"THE COURT: He did everything that you wanted him to do? You can think of nothing else that he should have done?

(The Defendant conferred with Mr. Egan.)

"THE DEFENDANT: No, sir."

Transcript at 3-5, State v. Mone, Docket No. 36246 (Superior Ct. Hartford Cnty. June 6, 1973), Exhibit A to Petitioner's Memorandum of Law in Opposition to Respondent's Motion to Dismiss and in Support of Petitioner's Application for Writ of Habeas Corpus.

stand trial. The record is barren of any evidence showing that Mone was aware of a potential conflict involving his attorney's representation of the couple. On this silent record, devoid of the particular inquiry waiver of the right to the undivided loyalty of counsel demands, I cannot find that petitioner knowingly and intelligently relinquished his sixth amendment right to the effective assistance of counsel.^{6/}

Prejudice^{7/}

Petitioner argues that he was prejudiced in fact from the joint representation, particularly at the time of sentencing. Mone and his wife appeared before Superior Court Judge Joseph F. Dannehy for sentencing. At the sentencing hearing Attorney Egan described Mrs. Mone as "misled griev-

^{6/} A guilty plea acts as a waiver of all independent constitutional deprivations that occurred prior to the entry of the plea so long as the "advice [of counsel] was within the range of competence demanded of attorneys in criminal cases." McMann v. Richardson, 397 U.S. 759, 771 (1970). See also Tollett v. Henderson, 411 U.S. 258, 267 (1973), United States v. Mari, supra, 526 F.2d at 119 n.1. As note 14 in McMann makes clear, counsel rendered ineffective because of a dual representation is not within the required range of competence. McMann v. Richardson, supra, 397 U.S. at 771 n.14.

^{7/} In United States v. DeBerry, supra, 487 F.2d at 453-54 n.6, the Court of Appeals held that where there has been no satisfactory judicial inquiry concerning the joint representation, the burden shifts to the government on the question of prejudice. See United States v. Carrigan, supra, 543 F.2d at 1056. Because I find that petitioner has succeeded in demonstrating actual prejudice, I do not need to determine if this rule is of constitutional magnitude and applicable on habeas corpus.

ously by her husband." He called her a "young lady" who was the "victim of circumstances to a degree."^{8/} The court found this characterization of Mrs. Mone's conduct persuasive and immediately prior to imposing sentence commented:

"I think that everybody has apparently come to agree that your husband deceived you, and that you thought that he was engaged in writing a book, and that you were not aware of what he really planned and schemed to do. After considerable thought I believe that to be so." ^{9/}

Petitioner's sentencing immediately followed that of his wife. At this hearing, Egan highlighted the strange background of the crime and the pain and suffering petitioner had caused his own family, especially his parents. Judge Dannehy rejected the recommendation of the prosecutor and sentenced petitioner to a term of nine to twenty years.

The attempt by Egan to diminish the offensiveness of Mrs. Mone's actions by emphasizing his other client's culpability was clearly prejudicial to the petitioner. Each defendant was entitled to "zealous and independent" counsel. United States v. Carrigan, supra, 543 F.2d at 1057. It is a denial of the right to the effective assistance of counsel for an attorney to sacrifice the interests of one client in order to secure a benefit for another. United States v.

^{8/} Transcript at 3, State v. Nanette Mone, supra.

^{9/} Id. at 5.

DeBerry, supra, 487 F.2d at 454; United States ex rel. Taylor v. Rundle, 305 F. Supp. 1036 (E.D. Pa. 1969); United States ex rel. Thompson v. Rundle, 294 F. Supp. 933 (E.D. Pa. 1968). See also, Gravitt v. United States, 523 F.2d 1211 (5th Cir. 1975). The situation here is not unlike that in Gravitt where the Fifth Circuit said:

"While the attorney may have decided that nothing favorable could be said in . . . [appellant's] behalf, we cannot presume that the actual remarks--unfavorably contrasting him with his brother . . . [the codefendant]--did not influence the trial judge in his assessment of punishment. The attorney's active disservice to appellant's interests compels a finding of ineffectiveness."

523 F.2d at 1219.^{10/}

The conflict of interest permeated the entire proceeding and requires that the petitioner be given an opportunity to withdraw his prior plea. Petitioner's plea of guilty was part of "a package deal." According to Attorney Egan's own testimony, at all times, he sought to negotiate a plea agreement for the "two of them together."^{11/} The key part of the deal was that Mrs. Mone would avoid further incarceration

^{10/}

In Gravitt, the same attorney represented two brothers charged with transportation and possession of firearms while convicted felons. At sentencing, counsel urged probation for the younger brother saying, "'I feel he was just at the wrong place at the wrong time with the wrong person.'" 523 F.2d at 1217 (*italics those of the Fifth Circuit*).

^{11/}

Transcript, Mone v. Zeichner, supra, at 158.

through a suspended sentence. Petitioner's own plea was dependent upon such a recommendation for his wife.^{12/} The plea package was to Mrs. Mone's decided advantage.^{13/} She was allowed to plead to a lesser offense with a recommendation for probation.

In deciding whether to plead guilty, a defendant is entitled to the effective assistance of counsel, untrammelled by conflicting loyalties. United States ex rel. Taylor v. Rundle, supra, 305 F. Supp. at 1040. In this case, the defendant Nanette Mone had a distinct interest and motive in seeing that the two defendants did not jointly go to trial. She claimed that she was an unwitting dupe of her husband, and that she had made telephone calls on behalf of her husband

^{12/}

Egan testified:

"When we got into the plea bargaining stage and he had talked to me, being most insistent that she get a suspended sentence, at that time he indicated to me that he would--when I would get a recommendation from the State's Attorney's Office that he would consider whether he would plead guilty or not. But the thing always was that she had to have a suspended sentence, and in fact, he wouldn't be put to plea the morning that they were both presented unless she went on first, as she did, and did get the suspended sentence. And I believe the record will show that, sir. I know it will show it."

Transcript at 145, Mone v. Zeichner, supra.

^{13/}

Mr. Mone did receive certain benefits from the deal. The state agreed to drop the two lesser conspiracy charges and recommend a specific term of years.

without any full awareness of the contours of his unlawful scheme. Petitioner's only defense concerned his lack of criminal responsibility for the crimes, that he was legally insane at the time of the incidents and unable either to appreciate the wrongfulness of his conduct or conform his conduct to the requirements of law. See Conn. Gen. Stat. Ann. § 53a-13. If the case had gone to trial, Egan acting for Mrs. Mone would have had to demonstrate how she had been misled and duped by her husband. In petitioner's defense, the attorney would try to show that Mone was legally insane. These two defenses while not necessarily inconsistent would certainly have posed grave strategic difficulties for joint counsel. Through documentary evidence, petitioner has established that he had a viable insanity defense.^{14/} Such testimony would have at least undercut Mrs. Mone's contention that she had been duped. The two had been married and lived together for more than a decade prior to the crime. Egan, as attorney for Mrs. Mone, had an incentive in insuring that petitioner's insanity claims were not fully aired. Attorney Egan's active disservice to petitioner at the time of sentencing when combined with the "package plea" agreement that was negotiated would seem ample prejudice arising out of the dual representation to invoke the rule of United

14/

Petitioner's Exhibits A-E. The issue is not whether petitioner's alleged insanity was so obvious as to render Egan's assistance incompetent, but rather whether counsel's divided loyalties may have prevented the full exploration and presentation of such a colorable defense.

States v. Lovano, supra, and require the state to give him an opportunity to withdraw his prior plea. As Mr. Justice Murphy observed in Glasser v. United States, supra, 315 U.S. at 76, "The right to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial."

The state maintains that Mone was not prejudiced by the proceedings because he concurred in the strategy Egan employed. Following petitioner's plea of guilty, Judge Dannehy asked Mone if he had any further questions. After conferring with counsel, Mone asked that his wife be given mercy because she had no knowledge of the crime and had only done what petitioner demanded of her.^{15/} The state would have the court infer that it was a calculated strategy of the two defendants that petitioner should take the blame for the

^{15/} Mone stated:

"Your Honor, I again would like to emphasize my wife had absolutely no knowledge of what did take place, and I at this time would very much like to ask the Court if the Court might have mercy to release my wife, to release her clear, because she had nothing whatsoever to do with this. She did only what I asked her to do, and she just thought that I was writing a book. My family thought I was writing a book. The way this thing turned out there was no knowledge at all. I do not want to see her with a criminal record because there was no conspiracy ever."

Transcript at 11, State v. Mone, supra.

crime. But in this case where there was no waiver of petitioner's right to the unimpaired assistance of counsel, this strategy only heightens the prejudice that accrued because of the joint representation. In the absence of such a waiver, Egan had no right to turn Mone into an advocate for his wife to the detriment of petitioner's own defense. In a similar circumstance, the Court of Appeals has stated:

"The government argues . . . that it was decided by the defendants that Edwards would serve as the 'fall guy' and it was hoped that DeBerry would be acquitted. We do not know this, but even if we did, there would be all the more a conflict of interest. No one should be represented by an attorney who is making him the 'fall guy' by design."

United States v. DeBerry, supra, 487 F.2d at 454. It would have been obviously prejudicial for Attorney Egan representing the couple to have placed Mone on the stand and elicited such admissions of guilt. While the comments at the plea were made in a different context, for the purposes of demonstrating the prejudice of the dual representation they stand on a similar footing.

In deciding to plead guilty, petitioner of course might be influenced by any leniency shown his wife. He might even perhaps decide to emphasize his own guilt in order to mitigate her responsibility. See Boehmer v. United States, 414 F. Supp. 766 (E.D. Pa. 1976). The point is only that in

A 89

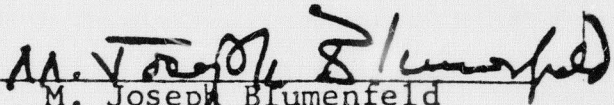
Memorandum of Decision dated March 26, 1977
(Federal Habeas Corpus Case)

making such decisions, petitioner is entitled to the loyal and zealous assistance of independent counsel.

For these reasons, it is ORDERED that a writ of habeas corpus shall issue unless the state shall vacate the petitioner's prior sentence and afford him the opportunity to plead over within 60 days of the entry of judgment in this action.^{16/}

SO ORDERED.

Dated at Hartford, Connecticut, this 26th day
March 1977.


M. Joseph Blumenfeld
United States District Judge

^{16/}

These 60 days shall be computed in accordance with the rules stated in 18 U.S.C. § 3161(e), (h).

JUDGMENT OF THE DISTRICT COURT DATED APRIL 9, 1977

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUTFILED
APR 9 5 05 PM '77
U.S. DISTRICT COURT
HARTFORD, CONN.-----
JOHN H. MONE

v.

CARL ROBINSON, Warden,
Connecticut Correctional
Institution at Somers

CIVIL ACTION NO. H-75-296

JUDGMENT

The above-identified action came on for consideration by the Court by the Honorable M. Joseph Blumenfeld, Senior United States District Judge, of the Petitioner's Petition for a Writ of Habeas Corpus; and,

After a hearing on the Petitioner's Petition, the Court filed its Memorandum of Decision ordering that the Petition of the Petitioner for a Writ of Habeas Corpus shall issue unless the State of Connecticut vacates the Petitioner's prior State sentence and affords him the opportunity to plead over within sixty days of the entry of Judgment in the above-identified action;

It is accordingly ORDERED and ADJUDGED that the Peti-

Judgment of the District Court dated April 9, 1977

tioner's Petition for a Writ of Habeas Corpus shall issue unless the State of Connecticut vacates the Petitioner's prior sentence and affords him the opportunity to plead over within sixty days of the date hereof.

Dated at Hartford, Connecticut, this 9th day of April, 1977.

SYLVESTER A. MARKOWSKI, Clerk
United States District Court

By: [Signature]

Deputy-in-Charge

APPROVED:

By: [Signature]

M. JOSEPH FLUMENFELD

Senior United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOHN H. MONE,

Petitioner-Appellee,

v.

CARL ROBINSON, WARDEN, CONNECTICUT
CORRECTIONAL INSTITUTION AT SOMERS,

Respondent-Appellant.

State of New York,
County of New York,
City of New York—ss.:

DAVID F. WILSON being duly sworn, deposes
and says that he is over the age of 18 years. That on the 28th
day of June, 19 77 he served one copies of the
Joint Appendix on
Michael J. DeGregorio, Esq. and Stephen Wizner, Esq.

the attorney s for the Petitioner-Appellee
by depositing the same, properly enclosed in a securely sealed
post-paid wrapper, in a Branch Post Office regularly maintained
by the Government of the United States at 90 Church Street, Borough
of Manhattan, City of New York, directed to said attorney s at
No. 27 North Street, Pittsfield, Mass. () N. Y.,
No. 127 Wall Street, New Haven, Conn., respectively
that being the address designated by the m for that purpose upon
the preceding papers in this action.

David F. Wilson
.....

Sworn to before me this

28th day of June, 1977.

Courtney J. Brown
COURTNEY J. BROWN
Notary Public, State of New York
No. 31-5472920
Qualified in New York County
Commission Expires March 30, 1978